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HALIFAX

Speaker	Agency	Street	City	Postal Code
Ralph D. Hindson	Cansteel Corporation			
Michael Bradford	Coalition for Development		Halifax, N.S.	
Leonard Kasdan	Dalhousie Faculty Assoc. Community Relations Com.		Halifax, N.S.	
Anita Reynolds	Development Education Resource Services			
Paul Brodie Susan Mayo	Ecology Action Centre Dalhousie University		Halifax, N.S.	
Jim Lotz		Box 3393 Halifax South P.O.	Halifax, N.S.	B3J 3J1
Paul Keddy	Halifax Federation of Naturalists	6172 South Street, Apt. 4	Halifax, N.S.	B3H 1T5
Gertrude Knight	Halifax Welfare Rights		Halifax, N.S.	
Al Herfst	Dalhousie University Faculty of Law		Halifax, N.S.	
Rev. Clinton Mooney	Maritime Conference of the United Church of Canada	Box 196	Gagetown, N.B.	E0G 1V0
Raphael Gregoire	Naskapi - Montagnais Innu Association of Labrador			
Gerald Yetman	Nova Scotia Federation of Labour		Halifax, N.S.	

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June 29th, 1976.

MEMO TO: Don Gibson

FROM: Darryl Carter

RE: Southern Hearings - Berger Inquiry

Halifax - June 8th, 1976 - 2:00 p.m.

Clinton Mooney,
Maritime Conference of United Church of Canada

--passed a resolution at annual meeting calling for a moratorium until land claims are settled and definite measures to protect the environment

--we must change our life styles and find alternative energy sources

James Lotz,
Freelance research worker and writer
associated with Carruthers Commission
and did research work for ITC on their Nunavut proposal

--has written one book entitled "Northern Realities" and many papers

--the problems of the north are always defined in southern terms by southern experts

--territorial council does not work because it has little awareness of its power but there is a large bureaucracy in Yellowknife

--the Government always says that its projects are good for the north, but only the oil and gas companies are honest, they admit that they are in there to make money

--critical of the churches, e.g. how much land have they turned over to the natives or how many native clurgy are there; the churches are running around shouting with their feelings of guilt

--also crictical of the universities--why don't they let the native people speak for themselves--every biologist who goes north is an instant expert

--universities criticise the Government and then asked them for more money for research

--if there is violence in the north it will be internal and the real problem is that the natives will only hurt themselves

--there is presently a lost generation in the north

Leonard Kasdan,
Representing, Dalhousie Faculty Association

--the Cabinet must make its decision in accordance with the majority of public opinion

Ralph D. Hindson,
Cansteel

--hopeful that Mackenzie Valley Pipeline could play a significant role in providing business for the Canadian steel industry and give Cansteel a real shot in the arm

Richard Rohmer

--there is now a prima facie case that it would be in the national interest to build a gas pipeline from Alaska outside the Mackenzie Valley

--the gas must more from Prudhoe Bay either by the El Paso proposal or across Canada and the main problem with the El Paso proposal is that it does not put the gas where it is neeeded

--we need a pipeline from the Arctic to avoid trade deficits like Britain has experienced

--supports the water route for both mackenzie delta gas and Arctic Islands gas

Kath Skerrett

--we have treated the natives shamefully in the past

--we must change our way of life; our patterns of over-consumption

Raphael Gregoire,
Naskapi-Montagnais Innu Association of Labrador

--ancestors lived in Churchill River area

--supports northern natives and shares their values as northern peoples

--have experienced developments themselves without the power to control their future

--don't want to turn the clock back but land is so important to their culture that it must be preserved

--recommends (1) native environmental inspectors; (2) national regulatory council on natural resources; (3) management training program to allow natives control of their affairs when claims are settled

Paul Keddy,
Halifax Field Naturalists

--not convinced that the impact on the environment will be minimal particularly since the pipeline will be the first step in the corridor

--we are starting to put a higher value on land in accordance with the value that the natives put on it

--there should be a land claims settlement before further exploration activity.

--the Government must look to alternative energy sources

Monsenior Colin Campbell,
Roman Catholic Archdiocese of Halifax

--supports Bishops Labour Day statement

--presented audio-visual presentation entitled "northern development at what costs"; narrated by George Finsted; including the song about the Dene nation--a cry for just from the native people; statements from George Crasmus and Gina Blondin; statements that the impact has been minimized by those that support the project; that there is no real energy crisis; that our society must be changed

L. Herfst

--formerly a resident of NWT with the RCMP and currently a law student

--presented a brief on "aboriginal title"

John Ellwood spoke on behalf of Foothills, principally in response to Mr. Rohmer's statements, stating that Foothills was currently advocating the Fairbanks Corridor for Alaskan gas because it avoided the Alaskan Wildlife Range and they had decided that it was not practicable to construct across the north slope in the winter time and it would use spare capacity in pipeline systems in southern Canada.

--Mr. Rohmer's Y route proposal would involve many miles of pipeline across areas of Canada not opened up yet and at much greater a cost.

Bud Hollands spoke on behalf of Arctic Gas stating briefly that Mr. Rohmer's suggestion on alternative routes was a matter for the NEB but he agreed with Mr. Rohmer's basic assumption that Canada and US markets required access to frontier gas. Mr. Hollands also outlined Arctic Gas' position on land claims that Arctic Gas urged an early settlement and hoped that it could be done prior to construction since it was a matter that had to be settled whether or not the pipeline was built. He stated that although conservation was necessary it would not be sufficient to satisfy the demand for gas that will result from increased populations (not excessive live styles)

--he also stated that alternative forms of energy are not currently available

--he also stated that curtailing exports would buy little extra time as the NEB has said. A moratorium would cause unemployment in the north

--Mr. Hollands explained the Nortran program

--Mr. Hollands said that if frontier energy was not available we would have to increase imports with an adverse effect on the balance of payments and the use of ships with its environmental hazards

Steven Kakfwi spoke on behalf of the Indian Brotherhood and Metis Association. The northern natives do not want a settlement like James Bay; the Notran program was just a public relations stunt; the Dene declaration states the realities that the Territorial and Federal Governments are not Governments for the Dene

Halifax - June 8th, 1976 - 8:00 p.m.

Michael Bradford

--development should benefit and not exploit the natives

--it is our life style that has created the problem so we should change not force the natives too

Gerald Yetman,
Nova Scotia Federation of Labour

--supports natives demand for justice

--doubts whether there is a real energy crisis

--there is very little guarantee the ecology will not be upset

--need more research because of speculation that the heat in the pipeline will melt the permafrost

--may be safer and cheaper to transport by ships like the El Paso proposal and this would give work in Canadian ship yards

Anne Ottow,
Pollution Probe of Moncton

--the pipeline is another example of the Government gone mad

--moralists find the pipeline obscene

--the natives simplicity and solidarity is an example to us all

--the Government supports big business to the detriment of individuals

Graydon Nicholas,
Union of New Brunswick Indians

--supports northern natives; they must not be required to extinguish aboriginal rights as has happened in James Bay

Paul Brodie

--mentioned that he did whale studies for Slaney and Associates in 1972

--we are too eager to maintain our life style based on non-renewable energy and there should be a delay

--we should concentrate on programs like taking off taking off taxes on insullation and promoting mass transit

--we should concentrate on the Athabasca Tar Sands which is further south and more manageable

--we should not forget about the opposition that there is to trapping of the animals

The Judge asked Brodie to discuss with council the criticism he had of Slaney's whale studies.

This was done at a break and Brodie agreed to review his report as filed by Bob Webb to see if he had anything further to add.

Susan Mayo,
Ecology Action Centre - Dalhousie

--must develop a national energy policy

--must reduce consumption for example Sweden uses one-third less energy per person as compared to Canada

--concerned about quality of life in the south and justice in the north

--society should be not based on material values but rather on simplicity, humility and craftsmanship

Elizabeth Beale,
Voice of Women

--the treaties with the Indians were unfair and there should be no development of a pipeline until there is a proper land claims settlement

--development will have a detrimental effect on the economy

--concerned about effects on women, e.g. social upheaval which effects the family

Gertrude Knight,
Halifax Welfare Rights

--supports land claims settlement before pipeline to give the natives a position of strength from which they can protect their rights

Dennis Pilkey,
St. Paul's Anglican Church

--the church has historically been working for the indians

--need an irrevocable land claims settlement and an reorganization of the Department of Indian and Northern Affairs

Rev. Owen Channen,
Presbyterian Churches of Halifax and Lunenberg

--asked for justice for northern people although it doesn't like to use term 'native' because considers himself native since he has no other country to call his own

--calls for repentence in theological terms for our wasteful way of life by cancelling Mackenzie Valley Pipeline or at least settling the land claims first

Anita Reynolds
Development Education Resource Society

--the source of the problem is monoply, capital and centralized Government

--need humanization and supports the native's efforts to determine their own future

MACKENZIE VALLEY PIPELINE INQUIRY

BRANCH OFFICE:

Empire Building
124 O'Connor Street, #502
Ottawa, Ontario K1P 5M9

Telephone: (613) 235-6159
Telex: 053-3693

COMMISSIONER

Mr. Justice Thomas R. Berger

HEADQUARTERS:

Resources Building
5009-51st Street,
P.O. Box 2817
Yellowknife, N.W.T. X0E 1H0

Telephone: (403) 873-3580
Telex: 034-45552

HALIFAX, NOVA SCOTIA

Tuesday, June 8, 2:00 p.m.

1. Maritime Conference of the United Church of Canada
2. Jim Lotz
3. Dalhousie Faculty Association, Leonard Kasdan
4. Cansteel, (R.D. Hindson)
5. Richard Rohmer
6. Halifax Field Naturalists
7. Miss Kathy Skerrett, Truro, N.S.
8. Montagnais Indian Association of Labrador
9. Naskapi Band
10. Coalition for Development, Beverly Iwan
11. Anglican Church Women, Joyce H. Draper
12. Catholic Social Services Commission, Mike Marentette
13. Al Herfst

Foothills re: Y-Line

- A&G intrudes wildlife range
- Alcan avoids this
- winter const. cost ∴ Alcan not North Slope
- use existing facilities ∴ Alcan
- Rhomer's means p/l in virgin area.

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OPENING REMARKS

BY THE HONOURABLE MR. JUSTICE T. R. BERGER

AT THE HEARINGS OF THE

MACKENZIE VALLEY PIPELINE INQUIRY

HALIFAX, NOVA SCOTIA

TUESDAY, JUNE 8TH, 1976

2:00 P.M.

We in Canada stand at our last frontier. We have some important decisions to make, decisions for which all of us will share a measure of responsibility.

Two pipeline companies, Arctic Gas and Foothills Pipe Lines, are competing for the right to build a gas pipeline to bring natural gas from the Arctic Ocean to southern Canada and the United States. The Government of Canada has established this Inquiry to see what the social, economic and environmental consequences will be if the pipeline goes ahead, and to recommend what terms and conditions should be imposed if the pipeline is built.

We are conducting an Inquiry about a proposal to build a pipeline along the route of Canada's mightiest river; a pipeline costlier than any in history; a pipeline to be built across our Northern Territories, across a land where four races of people (white, Indian, Metis and Inuit) live, where seven different languages are spoken; the first pipeline in the world to be buried in the permafrost.

The pipeline project will not simply consist of a right of way. It will take three years to build. It will entail hundreds of miles of access roads over the snow and ice, it will mean that 6,000 workers will be needed to build the pipeline, and 1200 more to build the gas plants in the Mackenzie Delta; it will mean pipe, barges, wharves, trucks, machinery, aircraft, airstrips; in addition, it will mean enhanced oil and gas exploration and development in the Mackenzie Valley, the Mackenzie Delta and the Beaufort Sea.

The Government of Canada has made it plain that the gas pipeline is not to be considered in isolation. In the Expanded Guidelines for Northern Pipelines they have laid it down that we are to proceed on the assumption that if a gas pipeline is built an oil pipeline will follow.

So we must consider the impact of an energy corridor that will bring gas and oil from the Arctic to the mid-continent.

It will be for the Government of Canada, when they have my report and the report of the National Energy Board, to decide whether the pipeline should be built and the energy corridor established. These are questions of national policy to be determined by those elected to govern.

My task, and the task of this Inquiry, is to make sure that we understand the consequences of what we are doing, to enable the Government to make an informed judgment.

The Inquiry began its hearings on March 3, 1975 in Yellowknife. Since then we have held many months of formal hearings listening to the evidence of engineers,scientists, biologists, anthropologists, economists, listening to the people who have made it the work of their lifetime to study the North and Northern conditions.

The environment of the Arctic has been called fragile. That may or may not be true. Arctic species certainly are tough. They have to be to survive, but at certain times of the year, especially when they are having their young, they are vulnerable.

If you build a pipeline from Alaska along the Arctic coast of the Yukon you will be opening up a wilderness where the Porcupine Caribou herd calves - on the coastal plain and in the foothills - every summer. Then it is proposed that the pipeline from Alaska should cross the mouth of the Mackenzie Delta, where the white whales of the Beaufort Sea have their young each year. Millions of birds come to the Mackenzie Delta and the coast of the Beaufort Sea each summer from all over the Western Hemisphere to breed and to store up energy for their long journey south in the fall. Can we build pipelines from the North under conditions that will ensure the survival of these species? These are some of the questions that we are examining.

But it is the people of the North that have the most at stake here, because they will have to live with whatever decisions are made.

That is why the Inquiry has held hearings in 28 cities and towns, villages, settlements and outposts in the North, to enable the peoples of the North to tell me, the government and all of us what their life and their own experience have taught them about the North, and the likely impact of a pipeline and energy corridor.

The Inquiry has been from Sachs Harbour to Fort Smith, from Old Crow to Fort Franklin, and has heard from 700 witnesses in English, French, Loucheux, Slavey, Dogrib, Chipewyan and Eskimo.

Our task is to establish constructive approaches to Northern development. If we are to do that we have an obligation to canvass all of the questions before us.

Some of these questions are: Should native land claims be settled before the pipeline is built? If it is built, and the native people want to participate in its construction, how can we ensure that they are given an opportunity to work on the pipeline? Can they develop skills on the pipeline that will be of some use to themselves and to the North after the pipeline is built? Can we provide a sound basis for Northern business to obtain contracts and subcontracts on the pipeline?

What about the unions? We are told they have an awesome measure of control over pipeline construction in Alaska. Should they have the same measure of control over pipeline construction in the Mackenzie Valley?

What about the local taxpayer in Yellowknife and Inuvik? If you have a pipeline boom, you will have to expand your schools, your hospitals, your police force, your local services. What measures ought to be taken to enable the municipalities and other institutions of local government to cope with the impact?

The Mackenzie Valley is a long way from ~~Charlottetown~~ Halifax. But the concern we have found for the future of the North extends throughout Canada. We have received a multitude of requests, from every region of Canada, including the Maritimes, for an opportunity to be heard. I think this has happened because we Canadians think of ourselves as a Northern people. So the future of the North is a matter of concern to all of us. In fact it is our own appetite for oil and gas, and our own patterns of energy consumption that have given rise to proposals to bring oil and gas from the Arctic.

It may well be that what happens in the North and to Northern peoples will tell us something about what kind of a country Canada is and what kind of a people we are.

That is why we are here to listen to you.

C608

Division of Mission in Canada

Halifax, June 8, 1976.

Mr. Justice Thomas Berger,
Mackenzie Valley Pipeline Inquiry,
Halifax Hearings.

Dear Sir,

At the 52nd. Annual Meeting of the Maritime Conference of the United Church of Canada, held in Sackville, N.B., May 27 to 30, 1976, the following resolutions were passed.

(1) The Mackenzie Valley Pipeline:

Whereas native land claims in the Mackenzie Valley have not been settled;
whereas, if development of the Mackenzie Valley pipeline proceeds, if would prejudice the resolution of such claims; and
whereas environmental protection cannot be adequately guaranteed given the present level of understanding of the technological impact;

Be It Resolved that the Maritime Conference of the United Church of Canada urges a delay in the development of the Mackenzie Valley pipeline until the native land claims are settled and until definite measures to protect the environment are established.

(2) The Mackenzie Valley Pipeline Inquiry:

Whereas the Government of Canada has initiated the Berger Commission to conduct the commendable investigation into northern development; and
whereas there are currently indications that some members of Cabinet do not support the Berger Commission;

Be It Resolved that the Maritime Conference of the United Church of Canada supports the Berger Commission in its efforts to give a complete public hearing to these issues, and urges that its final report be the basis for further directions of northern development.

... 2

Formal notification of these motions is being sent to your Ottawa office. We thought it important, however, to make an appearance at these hearings to reinforce our commitment to the perspectives expressed in the motions.

The 800 delegates to Conference from all over the Maritimes have committed themselves and their Church to stand behind the priority of native land settlements (a question of fairness and human rights) and of environmental safeguards (a question of responsible stewardship) on this issue of frontier resource extraction.

Furthermore, we endorse most emphatically the philosophy and procedure which has guided the conduct of this Inquiry, itself. We commend the openness and the broad participation that has been encouraged by this forum, and hope that future government inquiries will adopt this style. It will be with continuing interest that we await the report of this Inquiry and will watch its reception and utilization.

Sincerely,

(Rev.) Clinton Mooney
Church in Society Convenor,
Maritime Conference,
The United Church of Canada.

C 609

JIM LOTZ ASSOCIATES
BOX 3393 SOUTH
HALIFAX, N.S. CANADA B3J 3J1
Ph. (Res.) 902-423-3263

BRIEF TO THE MACKENZIE PIPELINE INQUIRY

My name is Jim Lotz, and I am an independent research worker, organizer, enabler and freelance writer. Between 1955 and 1965, I was deeply involved in northern research and northern development. On the basis of my work I have written one book(Northern Realities:The Future of Northern Development in Canada) and over 100 papers, articles, reports, and reviews on all aspects of the North.

Since 1965, I have been engaged in research and teaching in the social, human and community aspects of development. A book summarizing my experiences and ideas, entitled Understanding Canada, will be published by NC Press in the fall. Most of my research has been on 'marginal peoples ' -- squatters, unemployed youths, and others outside the mainstream of Canadian life. I spent much time commutting betweem the centres of power in Canada and the margins of the country, and looking at the world of 'the metropolis' and XXXX of the 'hinterland'. I don't subscribe to the belief that Ottawa is peopledwith wicked and incompetent individuals, intent only on creating misery for all Canadians. However, I do believe we need a Citizen's Enquiry into the weird and wonderful world of the Ottawa bureaucracy. Ottawa is the capital of 'Outside', that strange world that they talk about in the North.

In this brief, I'd like to look at some of the underlying assumptions and questions about northern development. Quite obviously, this inquiry is not about sticking a few thousnnd miles of pipe across the North. The North has become a mirror to the nation -- here we see our follies, fears and foibles, projected on a great white screen. In the talk of northern development, the main question that needs answering is -'Whose needs are being met by this idea, this concept,this proposal?'. Every crazy southern scheme -- from Anik to the Great Whale Pig -- has been rationalized as a way of 'helping northern development, and /or the people of the North'. In February, Inuit Tapitisat of Canada produced a proposal for Nunavut. What happened ? The Territorial Council hired a southern academic who reported that the scheme was 'impossible'. Had we hired northern experts -- the people who have to live with the crazy schemes produced by southerners -- to check out some ideas to 'help them', we might be in less of a mess than we are at present.

In the past, northern development is not something that benefitted northern people. It is something that bypassed them. The northerners paid the costs -- and others got the benefits.

About a year ago, I was Resource Person at a teach in on the impact of oil on Peterhead, Scotland, held in Aberdeen. The situation at Peterhead, where oil and gas pipelines are coming ashore from the North Sea, was chaotic. Peterhead is a bleak place where a prison used to be the mainstay of the economy. Land speculators made fortunes on land sales, while the local government was powerless to act. An ammonia plant was to be built, without any concern for its impact -- until citizens protested. People were not being informed and involved in the developments that were affecting them.

I did not get a chance to visit Shetland, but I got good information on what was happening there. And I understand that members of the Inuit Association of Labrador have visited Shetland. In Shetland, the local, elected council has got special powers to take part in economic development. They have said to the oil companies -- 'you need us. We don't need you'. Shetlanders have pride and confidence in their ability to meet the world on equal terms. They are not escaping the costs of rapid development - but they are aware of the costs and benefits. The local government tells people what is happening -- openly and honestly.

Over the past twenty years, the native peoples of the North -- and all northerners -- have been given the impression that they are incompetent, and that they need help. This help has been offered by people who took little time and trouble to understand the nature of the North and of its people. You cannot develop a sound development approach based on the weaknesses of regions. You have to search for the strengths . I remember the anguished cry of an Indian woman -- 'why is it when we Indians start to do something, some white man comes along and tries to tell us how to do things right!'.

The North is being regarded as more than a geographical location. This land, and its people are expected to redeem the nation. Somehow, the North is supposed to 'save ' Canada. And so we dump all our sins, our needs, our tensions up there, in the hope that this will somehow get rid of them. Instead of examining their assumptions, various southern based Canadian groups have rushed into the North -- 'to help the people of the North'.

The Churches. The churches have lost their leadership position in southern Canada. There is a massive indifference to organized religion there. So what are they doing? They are espousing the cause of the native people. Yet how many Indian and Inuit clergymen are there -- and how recently have they been ordained? And do the established churches still believe that their method of training and ordination, based on concepts derived from outside the North, are valid for this ancient part of a new nation? In the North, the established churches are beginning to talk about the 'divisive effects' of the minority churches. I remember an Anglican minister of native origin in the delta in the early Sixties who was smacked over the knuckles by his Bishop because he

attended Pentecostal services. I know of another area in which the Catholic priest opposed the inoculation of the Inuit against smallpox.

While people are looking for moral and spiritual guidance, the established churches are off on a tangent, trying to regain their leadership -- in the name of northern development. How much land have they turned back to the native peoples of the North? How much tax are they paying towards the running of the North? On the church involvement in the North, one suggestion would be ;'No representation without taxation'.

The Universities. The universities have been on the northern bandwagon for years. Instead of seeking for,or creating, badly needed neutral ground in the North, the universities have used the North and its people. Where are the Inuit and Indian professors in Canadian universities? Years ago, in various articles, I suggested that our universities and our school system hire native peoples as consultants, to tell our young people what the real world was like. Seven years ago, at a conference in Edmonton, I suggested that the international experts present get together and train young northerners in conservation. There was no interest in the idea -- the academics were too busy accusing the government of sin, pollution, and waste, while at the same time demanding research funds to solve all kinds of problems.

In the social sciences, we have an enormous literature on what is wrong with the North. We know very little about the healthy aspects of the people of the area. While our universities turn our hordes of overeducated unemployables, and go off doing research on all kinds of pathologies, people in the North are asking for accurate knowledge, for training, for direction.

My stance as regards the churches and the universities is that they should get back to what they do well. The churches should provide a moral presence, and spiritual guidance. The universities should get back to seeking for the truth, wherever it may be, and disseminating the results of their search.

Many university people have stolen leadership roles from the people of the North. Any graduate in biology from Toronto is automatically an Ecologist once he steps north of Sixty. The traditional peoples of the North were ecologists and conservationists, long before the white man came. If they did not treat the land and the animals well, they starved and died. In our society, if we foul things up in research, we just ask for a bigger grant. Every job in the North is defined in southern terms. And then we wonder why native people can't find employment. The young people of the North, educated in southern style schools between 1950 and 1970, know neither the old way ,nor the new. They are truly a lost generation. Little wonder that they are angry, or depressed, or prey to every wandering messiah who will offer them a way out of their dilemma.

The government's policy over the past twenty years -- and this has not been a conscious policy -- has been 'divide and dismay'. As far as I am concerned, the people of the North are one. Of course you get varities in ethnic groups,classes, etc.

But to survive in that harsh land, you need certain skills. And the North tends to unite people. The land is so large, so hostile, so uncaring, that you are forced to face yourself, and your fellows, and come to some sort of concern for community. So much writing about the North plays up the individualism of the northerners. Yet it is concern for community, and for co-operation, that is essential for northern survival. Over the past twenty years, all the fears, phobias, fantasies, and dreams of a segmented, fragmented, secular southern society have been dumped into the north. We in the west 'use' people. We need to extend ourselves, to conquer and to control. This is not the northern way.

The western way is linear, verbal, and propositional. We are always pushing forward our own ideas and our own egos, saying 'We must do this, we must do that'. The traditional way is non-linear, intuitive, appositional. It puts things together, senses the environment. It does not seek to control the environment, but to understand and to placate the forces that control it. Ten years ago, in an article entitled 'The Future of the Eskimo' in the journal Futures, I suggested that the Inuit might be the people of the future, able to exist and to thrive in the economy and society of scarcity, where we are heading.

Dr. Diamond Jenness was once called in by some Indians in B.C. in the Thirties. They were being harassed by the missionaries and by the police because of the way they treated people with mental illness. Dr. Jenness quietly listened, and then explained that the traditional Indian way was just as valid as the 'modern' way. In West Africa, psychiatrists and witchdoctors are working together. What does it matter if the psychiatrist calls what he is doing 'curing a neurosis', and the witchdoctor talks of 'casting out a devil' -- so long as the person being treated is restored to being a more functional person, able to take responsibility for his own actions, and continue to love and to have compassion for himself and others?

We need the wisdom of the traditional way, and the wisdom of the modern world. We have to treat each mode as equal, and to seek for the truth in each. In the North I have stood on glaciers in the High Arctic, and picked lichen. The lichen is a symbiosis of a fungus and an alga. They cannot live separately; together they bring life to the harshest places.

One obvious need in the North is to transfer more power to the local level. Twenty years ago, I was told by an African in Nigeria, that : 'We would rather be badly ruled by our own people than by you Whites'. This is what land claims is all about. No-one can be an expert in the lives of others. We can all share our knowledge, though. In 1953, I was sworn in as a Special Constable in the Nigerian Special Constabulary. For a week, we tried to do

what we could to stop Africans killing each other. After that came riots, and civil wars. It was the ordinary African who suffered most. In the case of the native peoples of the North, I think that violence will be 'internal', rather than external. People will harm themselves, --as they are already doing -- rather than blow up pipelines. You can always replace a piece of a pipeline. But we can never replace the people of the North. This enquiry should stress that Canada needs the knowledge, the wisdom, the skills, the incredible patience of the people of the North -- all peoples. We have to stop seeing the North and its people as the answers to our southern problems. Until we can face up, in southern Canada, to our problems and tensions, in a realistic ,humane and compassionate way, we can't go coping out by expecting the North to save the nation.

Thank You

Jim Lotz. Halifax, Nova Scotia, June 8,1976

C610

Dalhousie Faculty Association
Community Relations Committee

Brief to the Berger Commission

The Dalhousie Faculty Association wishes to commend this commission of inquiry for operating as an excellent medium of public education on a very complex subject. We see your role as similar to the one we play in the universities in educating people to understand the complicated issues of today.

There are many parallels that can be drawn between this inquiry and the educational system. For instance, the Federal cabinet has elected to take this course, presumably because they wanted to learn something about the feelings of the people. Part of the educational process consists of the students' (read 'Federal Cabinet') submitting themselves to an examination at the conclusion of their course of study. With this in mind, we have structured our brief as a number of questions, much in the way that university examinations are structured, except that in this exam all questions must be answered, and no time limit is imposed. The examiners are the public.

If the Federal Cabinet chooses not to answer these questions publicly in defense of its decision, then it has failed the course. Unacceptable answers will also constitute failure. The Cabinet will only get a passing grade and credit for the course by answering all

questions in a way that is satisfactory to a majority of the examiners. Our intelligent and well-educated electorate expects government decisions to be explained rationally and publicly. For the Cabinet to do less than to respond with the same degree of thoroughness that has characterized these hearings, would further erode public confidence in the democratic process.

The examination question paper constitutes our brief. Undoubtedly other questions could be asked and should be added. In the interest of time, I will submit our examination paper for your scrutiny, rather than read it verbatim.

Dalhousie Faculty Association

Final Examination for the Federal Cabinet

Subject: Pipeline 1976

Note: 1. Answer all questions
2. No time limit

(A) The Environment

1. Demonstrate that the environmental impact of the completed pipeline will be negligible, and that the impact of the actual construction will also be minimal in regards to water quality, air pollution, and all forms of wildlife. These assurances must be agreed upon by qualified scientists, both from those parties with vested interests and from independent researchers.

(B) The People of the North

2. It must be demonstrated that the boom of pipeline construction is not followed by a bust after it is completed. The government must show what will happen to the affected people after a project of this magnitude is finished.

3. Because many Native peoples of Canada wish to, but do not now participate fully and equally in our society, it is clear that Federal government policy has failed in this area. A close analogy to projected pipeline would be the DEW line where, during its con-

struction, the Native people acquired new skills and became accustomed to a new level of prosperity. However, since there was no continuing need for their skills, they were forced to settle back uncomfortably in their former lifestyle. If the pipeline is to be built, then the people of the north must derive maximum benefit in terms of employment, and safeguards must be established to ensure a continuing level of prosperity for them. In short, the Government must show that there will be satisfactory protection of traditional lifestyles, and adequate provision for a smooth transition to a viable new lifestyle where the old will be disrupted or destroyed.

4. Native land claims must be settled before approval is given to proceed with the pipeline. To have left these claims unsettled for so long is a measure of the government's indifference to this important issue. The interest in a pipeline must be regarded as a catalyst to bring the negotiations to completion to the mutual benefit of both parties. The Native peoples will have achieved a guarantee for their future and ability to choose their lifestyle, and the Federal government may at last demonstrate that it is serious about Native rights.

(C) The Economy

5. Is renegotiation of long-term contracts with the U.S.A. for power part of Government planning? Can the need for this pipeline be defined as a Canadian need? Is our goal one of Canadian self-sufficiency,

or are we being drawn unknowingly into a programme of continental self-sufficiency? The latter is unacceptable unless, for reasons of economy, supply and distribution, the southward flow to the U.S.A. is matched barrel for barrel, ton for ton, cubic foot for cubic foot, microcurie for microcurie and kilowatt for kilowatt, by a northward flow into Canada. For example, it may make sense for hydroelectric power to be exported to California from British Columbia, only if an equivalent amount of energy in the form of coal from Pennsylvania is exported to the Maritimes for thermal generating plants. In terms of national self-sufficiency it does not make sense to export hydroelectric power from the energy-starved eastern region of the country.

6. Demonstrate that the financing is such that the money is raised in Canada, that equity is held by Canadians and not a U.S. multi-national, and that the cost does not distort the economy by adding to inflation.

7. Demonstrate that the pipeline is superior to any other mode of transportation of gas, either road, rail, river, ocean or air.

8. Demonstrate that there is sufficient gas in the Canadian Arctic to justify, in economic terms, the building of such a pipeline to meet Canadian needs. If, in addition, gas from Prudhoe Bay can be transported in our pipeline, then that is to be considered an economic asset and the transmission charges can be used to offset construction and operating costs. Under no circumstances should the

pipeline be built to carry U.S. gas to U.S. markets, or worse, Canadian gas to U.S. markets.

9. Define our total energy picture for the rest of this Century. It should be clearly explained what the priorities are in closing the anticipated energy gap in the 1980's. How much emphasis is to be given to exploration for, and developing of, conventional energy sources and how much to new sources (solar, tidal, fusion)? How much to conservation? Why do we have to get into expensive Arctic gas and hideously dangerous nuclear fission while we remain a net exporter of energy? How can we build a $5 billion pipeline, and start a $2 billion Syncrude plant every two years, in terms of our ability to pay for and supply such enormous ventures? Show an intelligent and comprehensive plan for the next 25 years which emphasizes renewable and non-polluting forms of energy over fossil fuels, and fossil fuels over nuclear fission plants.

It is imperative that the Government discuss the issues clearly, fully and honestly with the public since they have no mandate from the people to commit their money and well-being to such an enormous project. If a decision is made in favour of the pipeline with anything less than a careful study of the findings of the Berger Commission and a full public debate, then the Cabinet is guilty of flouting the institution it created and the people it serves. Further, a decision without discussion will raise questions as to the propriety of that decision, and will suggest that the Cabinet has something unpleasant to hide. This will

further undermine public confidence in the present government in particular, and in the democratic process in general.

C611

BRIEF TO

THE HONOURABLE MR. JUSTICE THOMAS R. BERGER

THE MACKENZIE VALLEY PIPELINE INQUIRY

(THE BERGER INQUIRY)

Presented by:

Ralph D. Hindson
Managing Director
Cansteel Corporation

Halifax, Nova Scotia

June 8, 1976
Lord Nelson Hotel
Halifax, Nova Scotia

Mr. Justice Berger:

I appreciate the opportunity to present this brief which will be brief and I hope to the point.

The Cansteel Corporation is a statutory company created by the Government of Nova Scotia to provide the vehicle and the means for establishing a new steel complex in Cape Breton. This is not a "pie-in-the-sky" activity, but a real opportunity that the changing map of the world's iron and steel industry now affords to Cape Breton. Problems of the past should not cloud the opportunities of the future. Our greatest concern now is that Canadians, and I would prefer not to be specific, will be too slow to recognize the opportunity that we now have to establish a major industrial center in Cape Breton.

Cansteel has been successful in obtaining the active participation of four major steel producers who are sharing in the work and the cost of a comprehensive feasibility study now well underway. So far things look promising, but a lot of work remains to be done to prove the viability of the complex. In this regard, the MacKenzie Valley Pipeline could play a significant role.

Phase I of the project, if it goes ahead, would be for 2 - 2½ million tons of steel with a cost of close to $2 billion. Phase II, which would probably follow closely thereafter, would be for another 2 - 2½ million tons of steel in order to obtain the economies of scale required to be internationally competitive. Further expansion would take place depending upon the degree of success obtained on the first two phases and the needs and opportunities at the time.

Although not as attractive as skelp, the supply of slabs to another Canadian steel producer to augment his steel supply is another possibility during this period of very high demand.

I am not suggesting that the MacKenzie Valley Pipeline be held up waiting for Cansteel to go on stream. All I am asking is that the opportunity that Cansteel, or even Sysco, affords in easing the burden of steel supply, either directly or indirectly, be given serious consideration. The possibility of co-ordinating the planning and implementation of these two important projects in order to obtain maximum benefit for Canada should not be ignored.

Speaking generally, a project like the MacKenzie Valley Pipeline can do much for regional economic expansion in Canada. It is an industrial development tool that should be exploited to full advantage without any disadvantage to the project itself. It can provide the means for giving marginal or new industry a chance for success. Every effort should be made to encourage existing and new industries in the lesser developed parts of Canada to participate. A project of this kind is what they need in order to develop the competitive muscle to survive and to grow. We ask for no special favours, just the chance to compete in a national project.

This project provides considerable opportunity as well as economies for advancing Government Policy, for regional economic expansion in Canada. Let's not lose this opportunity by default.

Turning to transportation, all the goods and services required by the MacKenzie Valley Pipeline from various parts of Canada, as well as from abroad, will severely tax Canada's transportation system, let alone the pressure it will impose on Canadian suppliers. For this reason, supplies should be spaced over as long a period as possible and a means found to support the establishment of inventories. Industries on Canada's east coat that might be able to participate in the supply requirements might do well to consider using the port of Churchill, Manitoba. This would ease the transportation problem and might even prove to be more economic.

In summary, Mr. Justice Berger, the MacKenzie Valley Pipeline is a national project. If it were not so, you would not be here in Halifax today. My plea is that it also be national in implementation without prejudice to the project itself, which we believe should go ahead as soon as possible.

Thank you for hearing me today.

Ralph D. Hindson

C612

BRIEF TO

MACKENZIE VALLEY PIPELINE INQUIRY

SUBMITTED BY

RAPHAEL GREGOIRE

ON BEHALF OF

THE NASKAPI-MONTAGNAIS INNU ASSOCIATION OF LABRADOR

JUNE 7, 1976

NORTHWEST RIVER, LABRADOR

INTRODUCTION

We are Indian people of Northwest River and Davis Inlet, about 500 in number, of Naskapi and Montagnais Bands, and descendants of those Indian people, who for many generations lived, wandered and died in the territory drained by the great rivers of the Churchill River, Naskapi River and Red Wine River emptying into the headwaters of Lake Melville and Hamilton Inlet. In historical times, our ancestors, the Montagnais, hunted and later trapped in the inlands of Labrador. The Naskapi lived off the land and traditionally followed migrating caribou on the fringe of the Labrador tundra.

For centuries we have been an independent people, descendants of the aborigines who occupied the Gulf of St. Lawrence, the Labrador Plateau and the Lake Melville watershed. Throughout our history, our subsistence has been mainly from our knowledge and skill of hunting, fishing and later trapping the hinterlands of Labrador. We, the Naskapi and Montagnais Indians of Labrador, fully support the position which the Natives of the North West Territories have taken in respect to the Arctic gas pipeline. Although we have never met with our brothers in the North West Territories, we share, as Indians of northern Canada, some very basic values upon which our common history is built. For example, we occupy the same kind of environment. We too depend primarily on caribou, fish and small animals. We too live in a close spiritual relationship with Mother Earth. We also share our brothers' fate as a minority group in Canada. We see our land as well as our society and cultural integrity threatened by the Euro-Canadian

society. This is not a new thing. The oppression of our people started as soon as the traders, the missionaries, and the administration of Euro-Canadian justice entered our territory. The material poverty of our Indian communities in Labrador bear witness to this oppression.

We know well the kind of impact the gasline will have on our brothers in the North West Territories. In recent years, we have seen iron ore towns created in the heartland of our territory, the harnessing of electrical power through the flooding of our traditional hunting territories, the indiscriminate mining of our forests, the massive infusion of military and civilian personnel associated with the Goose Bay Air Base, the creation of sports lodges by outsiders throughout our lands. Not once during all these activities have we been advised, consulted, compensated for losses, or recognized as owners and occupants of the land or even as human beings with the most basic rights of self-determination. There has never even been a pretence of a hearing such as this for any development in Labrador even though they have caused our water courses to be changed, fur-bearing animals to be destroyed, our burial grounds and meeting places to be flooded, our caribou to be decimated. Even the location and design of our present communities have been brought about without consultation. We have been deprived of our human right to steer the course of our own history and development. The powers to shape our own future have been taken away from us. To have powers to shape one's own history, it is necessary to have a viable economy and some real measure of power.

Our land and sea are rich enough in resources for us to make a decent living as hunters and fishermen. The Government has not been willing to recognize this. They have not been willing to recognize hunting and fishing as a legitimate sector of the Canadian economy. They still view hunting and also fishing as an archaic, out-dated way of making a living esentially belonging to the Stone Age. They have not been willing to recognize that we still have our Indian culture and our social organization with its economic and political systems intact. Neither do the Euro-Canadians realize that our Indian heritage and traditions are undergoing changes as are any other cultural traditions in the world. Our way of hunting and fishing today is, to some extent, different from the ways of our forefathers. The major differences are in the technology and transportation that we are using today, and the fact that we today are linked up in various ways to the market economy of Canada and the rest of the world. What all this means is that our hunting and fishing economy must make adaptations to our modern situation where we are in contact with the dominant society. Our modern situation demands that we build the infra-structure that is necessary to deal adequately with the majority society - its economy and political system. If the Government of Canada and the Government of Newfoundland understood this, they would help us in building the necessary infra-structure just as they are subsidising with millions of dollars each year other sectors of the Canadian economy. Instead, the Government continues

to pursue a policy where they are content to put us on welfare. Do not misunderstand us, Mr. Berger, we do not want to turn the clock back, but nor do we want to see a further and irreversible erosion of our rights of self-determination. We understand the importance of development in the world and in Canada, but we are not sure that Canada understands the development of our own culture in this country. The survival of the Indian culture is dependent upon other factors, other developments taking place than the factors necessary for the survival of most immigrant cultures in Canada. A unique characteristic of the Indian and Inuit cultures is that they are based on a very special relationship to the land. The living cultures of the Indians and Inuit are based on the fact that Indians and the Inuit are related to the land as hunters so that the land from which we make a living today must be preserved in such a state that we can continue to hunt and live as hunters on this land. Now, we recognize that our cultures are changing, and that in the future our use of the land may change, and that these changes of land use may imply some of the activities which the Euro-Canadians designate or call by the term "development". But we must demand that the development of our own culture and the changes occurring in our society must be in the control of our own people. And to the extent that these cultural and social changes lead to changes in our use of the land, these changes in land use patterns entailing technological developments and the extraction of non-renewable resources

must also be in our control.

PRESENT SITUATION

Today, times have changed rapidly for the bad of our people. It appears that we, the Indian people, have suffered the most in our helplessness in making way and watching indiscriminate and uncontrolled industrial ventures such as mining, hydro-electric projects, pulp and paper forest industries begin to destroy our homeland and which have already left the lives of many of our Indian families in ruins.

The Federal Government, Provincial Governments, large corporations, big business interests plan to introduce industrial developments in the North, which will open up the North and consequently exploit our people of their valuable resource, and even destroy it. However, these developers, in their strange ways and wisdoms, say that the social impacts will be "very minimal". They view the North as a vast barren wilderness, in whose watersheds, on whose continental shelf, and within whose frozen rock lie the answers to the troubled economy of the South.

Our request is to put forth recommendations through you to the Federal Government in the hope that careful consideration of our recommendations will lead to immediate action.

I. That the recent announcement by the Minister of Indian

Affairs and Northern Development that Native people be hired as Environmental Inspectors/Specialist of somewhere in the neighbourhood of 60-70, be implemented immediately, and that these inspectors be distributed right across the country. These Native Environmental Inspectors should be recruited today from across the country to ensure an early start in their respective jobs.

II. A National Regulatory Council on Natural Resources should be set up immediately headed by Native Indian and Inuit with specialists in "environmental fields" assisting. This National Regulatory Council on Natural Resources should have duties to:

(a) issue, renew and/or veto permits for industrial exploratory projects;

(b) propose suitable legislation in relation to industrial explorations in order to minimize and even extinguish possible environmental damages on natural resources of the North;

(c) carry out environmental studies to assess possible abnormalities, changes and/or damages of the natural habitat of the North;

(d) be responsible for the "Native Environmental Inspectors", in the direction of their duties, and ensuring that these "Inspectors" keep regular liaison between them, the Council, and industrial developers.

III. Lastly, the end result of any land claims issue is an agreement between parties (Federal Government - Native People) that an understanding has developed on the issue of aboriginal rights of Native Inuit/ Indian people. The most important thing that Indian/ Inuit people are seeking is to manage and control their own affairs, and be independent once again. It would appear that when finally the outstanding land claims issues are settled (not extinguished), Indian/Inuit people will finally take control of their affairs. We recommend that a "Management Training Program" be established immediately so that when the land claims issues are settled (not extinguished), Native Inuit/Indians will have their own people to manage their own affairs. If this is not carried out, who benefits?

Mr. Berger, in those three recommendations we have attempted, through you, to make our views known in Government corridors, and to urge their implementation immediately.

Just remember, many times the clouds drop tears on the ground, then flowers grow, and every tree is green once more. The sun comes in the morning and the animals do their part - to sleep, to kill and to survive. Because the animals of the North cannot fight to save themselves of the "plans" of the Whiteman, now it's our turn to save them.

C613

MACKENZIE VALLEY PIPELINE INQUIRY

brief submitted by: The Halifax Field Naturalists
c/o Nova Scotia Museum
Halifax, Nova Scotia

June 1976

Justice Berger, it is a privilege to be able to speak before your Commission. The Mackenzie Valley Pipeline, and the accompanying northern development, pose questions of extreme importance to all Canadians. The answers to these questions will decide not only what kind of world we as Canadians will live in, but the kind of world that will be passed on to future generations. The Mackenzie Valley Pipeline situation raises crucial questions regarding native rights, land use policies, government responsibility to citizens, and the role of big business in our society. The Berger Commission recommendations will therefore be of critical importance to each and every Canadian, and we are pleased to be able to offer our opinions on some of these issues.

We would like to deal with three areas: government responsibility, the arctic environment, and native rights.

Government Responsibility to Citizens

On the topic of government responsibility, we would emphasize that responsible government is a Canadian right. Decisions relating to northern affairs must no longer rest with a few civil servants and resource extraction industries.

Thus far, the almost total lack of concern shown by the Federal Government over native rights and northern environment is nothing short of scandalous. Time after time, whether it was the starting of the Mackenzie Valley Highway, or oil drilling in the Beaufort Sea, the Federal Government has demonstrated a virtually complete abdication of responsibility in these areas.

Open, free, above board discussion and public input must be a high proirity of the Federal Government. We see your commission as a step in the right direction -- but at the same time, are aware that the Federal Government says it may go ahead with the project even before your commission completes its report.

The Northern Environment

On the topic of protecting the northern environment, we will be brief. We are certain your Honour has heard repeatedly about the threat of northern development to the delicate balance of nature in the Arctic. We wish to register our concern here as well. But there are several points relating to this that may not have been adequately emphasized.

The first is that Canada's north is a part of our heritage as Canadians; it is an integral part of the Canadian culture. Many Canadians will never see a seal, a polar bear, or a caribou -- yet will derive pleasure from them merely by knowing that these animals continue to roam free in our north. If these animals decline, we, as Canadians, will have lost a little of ourselves.

As well, Canada has global wildlife responsibilities. People around the world know of our northern animals. Do we, as Canadians, have a right to threaten a wildlife heritage which is global in its importance?

The International Biological Programme Ecological Reserves in Canada's north are perfect examples of ecosystems which are of international significance. Yet we understand that three such reserves would be violated by the proposed pipeline.

Many species of birds which breed in Canada's north range throughout the New World at other times of the year. According to a study done by the Institute for Northern Studies at the University of Saskatchewan, Saskatchewan residents estimate that migratory birds provide then with some 222 million dollars worth of recreational benefits annually. This is the result of a study involving 12,000 people who were asked to translate into monetary terms the benefits they felt they received over and above expenses from observing, studying and hunting birds. Now, Saskatchewan has a population of approximately one milliom people. For a rough

estimate of the total Canadian benefit from migratory birds, we can multiply by 20. This gives us a figure of 4.5 billion dollars worth of benefits from migratory birds per annum. Although this is only an approximation, it should serve to indicate the very real importance of migratory birds to Canadians. We might add that such a figure is an underestimate, as 6% of those polled in the Saskatchewan study said that the value of the birds was too great to be expressed in monetary terms.

While the gas line applicants have assured us that there will be minimal wildlife impact, we remain unconvinced. We know of no project on this scale which has ever avoided serious ecological consequences. As well, we understand that this will be only the first phase of an ever-expanding northern development corridor. The following developments will only increase the impact of our technology upon the fragile environment of the north.

Native Rights

As a naturalist organization, we can feel a great sympathy for the people of Canada's north. There is a growing awareness over much of the world that we must now renew our initmacy with the land. The rapid growth of natural history societies, and the exponential increase in activities such as wilderness canoeing and hiking are but two observable phenomena which attest to this change in social values. Yet while many southern Canadians are attempting to rekindle their feelings for the land, there exists a society where such values are an integral part of the culture. This society can be found among Canada's northern peoples. We can only express our strongest opposition to policies which could deprive Canada's northern peoples of their land, their livelihood and their culture.

There is a distinct choice between the culture of our northern peoples, and the artificial technological society which already dominates most of Canada's population and its southern landscape.

We feel strongly that native land claims must be settled --fairly -- before any construction begins, and before further exploration is permitted.

Canada's northern peoples have a right to their land and their values, and this includes the right to say "No!" to development.

Conclusion

In concluding, we would draw your attention to evidence that the pipeline is not the best answer to current energy problems. Merely ending our exports of natural gas would delay for some years the alleged need for such a pipeline. As well, experts tell us that conservation could cut our energy needs in half without any appreciable change in our standard of living. We would remind you as well that only a few years ago, the oil companies assured us that we had enough oil to last over 900 years; now they suddenly tell us that we must have rapid development of our north or we will face severe hardships. In light of the accuracy of their first prediction, we seriously question their present assurances that only the Mackenzie Valley Pipeline can now avert disastrous shortages. Is the Canadian public again being misled?

When one considers this proposed expenditure of billions of dollars, we seriously wonder whether the money would not be better spent on research into alternative forms of energy rather than merely purchasing a few more years of fossil fuels. These few years could be bought tragically at the expense of our arctic environment and the native peoples which depend upon it, in spite of the fact that far more acceptable energy sources are, or will soon be, available.

In short, your Honour, we believe that at very best, the Mackenzie Valley Pipeline can only delay by a few years the day of reckoning for our conventional energy supplies; at worst it could further delay our search for low impact energy alternatives, and begin the irrevocable destruction of Canada's great north and her indiginous peoples. We ask you to carry our concerns to the Federal Government. Thank you for this opportunity to speak.

C615

BRIEF:

in support of a fair and comprehensive land settlement to be made between the native peoples of the north and the Canadian government.

in support of careful regulation of the speed of extraction and the utilization of non-renewable resources.

in support of a prudent and honourable policy on the part of our government towards the proposed Mc Kenzie Valley Pipeline.

TO BE PRESENTED:

on June 8, 1976

before Mr. Justice Thomas R. Berger
The MacKenzie Valley Pipe-line Inquiry

at the Lord Nelson Hotel, Halifax, N.S.

BY:
Kathy Skerrett
37 Broad St.
Truro, Nova Scotia

INTRODUCTION

Good afternoon, Mr. Berger. My name is Kathy. For many months now you have been travelling across Canada to hear the views of Canadians regarding the proposed McKenzie Valley Pipeline. I admire your work very much, and I am proud of our government for establishing such a commission. I know you have heard evidence and eloquence supporting both sides of this issue from people who are far more knowledgable and qualified to speak before you than I am. I come before you as a grass-root... a concerned grass-root. That is my only qualification. I know that everything I have learned, you are already aware of. I know that everything I can say, you have heard before. The research I did for this brief could be done by anyone. The books and articles I have studied are widely available to the public. They can be read by anyone who cares enough to open them. And that is why I am here-- to show that I care. I care about the future of Canadian Indians and Inuit. I care about the way we plan to exploit and utilize our non-renewable resources. The McKenzie Valley Pipeline will have irreversible effects on both these concerns.

PART I

From time immemorial, for thousands of years before the white man came to this continent, the native peoples have lived in the northern regions. This is a harsh land. It is too cold, too empty, too cruel-- white men have preferred the fertile south and forgotten the vast expanses of the sub-arctic. But the native peoples have managed to survive and flourish in the Canadian north. They have developed life-styles which are in harmony with the land. They love it and understand it and to them the north yields life. Their culture, their economy, their security and identity are bound up in the character of the land. To native peoples the Canadian north represents not only a home; it is a way of life-- their way of life.

Suddenly the white man is interested in their homeland; he wants to invade it, rip it open and extract the oil and natural gas that lies below the surface. The large corporations that propose to go into the north will disrupt the delicate balance of the environment. Nature has taken centuries to establish the harmony that permits survival in these regions. The native people live as part of that harmony and respect their world and the creatures in it; however, there have been environmental studies made and reports suggest that the proposed development might cause irreparable damage to vegetation and wild-life. How will this effect peoples whose livelihoods

depend on trapping, fishing and hunting? The companies exclaim that construction projects will employ many native workers, but for the most part these would be temporary, low-paying jobs. Consider the inter-relationship of native culture and their traditional economy. If a person derives his security, identity and pride from his skill as a hunter, will nine-to-five labour be a satisfactory alternative?

The invasion of the oil companies will be accompanied by a sudden exposure of our culture to the native peoples. Through television, radio and a greater influx of southerners, the natives will be bombarded with strange values and foreign ideas. These people of the north have cared for the land and its resources. They have shared and co-operated among each other. Their culture forbids the exploitation of nature or people. Ours demands the exploitation of both. Is it morally right to inflict our ideas upon them and expect acceptance of our ways? Perhaps we should be seriously considering many of their attitudes as vital to survival of the human species in this world today.

The native peoples are most alarmed when they consider this threat to their identity. They have one instrument to bargain with-- their land. Our government recognizes the concept of aboriginal rights. They must not proceed with the pipeline until a land settlement has been made with the native peoples.

If they do not trust the government, it is understandable.

In the past many of the settlements made between the government and natives have been most unsatisfactory. Pittance compensation has been made for enormous tracts of land; promises have been broken on the government's part; treaties 8 and 11 are "questionable" in their validity. Our government is stained historically with dishonourable behaviour toward Canadian natives. It is a shameful blight on our national conscience.

The traditional method of terminating aboriginal ownership has been through treaties made between government and the natives. Look at the reservations in the south. There can be no doubt that this has not been a good arrangement for the Indians. We destroyed their way of life as hunters. Now so many must depend on welfare or unemployment. Their traditional culture is replaced by a poverty culture. The high rate of family break-down, alcoholism, violent deaths and crime among Indians indicates that we have treated these people unfairly, horribly. The treaty Indian is often faced with the dilemma of renouncing his Indian identity in order to share in the white man's prosperity, or remaining poor and keeping his status. The treaties have failed to protect the Indian people. Look at the living conditions on many reserves. Look at the education statistics, the unemployment statistics. We have failed these Canadians. The situation of the treaty Indians in the south is a tragedy. Surely we cannot permit this terrible injustice to reoccur in the north. Unhappily, we can not repair our past

injustices, but we can prevent future ones. We are now confronted with an opportunity to recover some of our fallen honour.

The native people are voicing their opinions. They are asking for a settlement that will ensure their cultural and economic development. In the past we have persisted in telling the native what he should and will do on the assumption that we know what is best for him. The tragic situation of the treaty Indian is glaring proof that we were wrong. Now we must listen to the native peoples. They wish to control their own growth, and surely that is not an unreasonable request.

The native people wish to be involved in Northern development. They want to participate in the decision-making; to be active in the future of their land. It seems only logical that they should be included as they know the land so well. A fair and comprehensive settlement must be made which will satisfy the natives' requests and alleviate their fears.

PART II

My second concern is for our own society. We have been warned repeatedly by experts that this little planet cannot support the terrible burden the human race casts on it. North Americans are particularily to blame for the over-consumption of its resources. We are a highly industrialized society and enjoy a wonderful standard of living. Our comfortable life-style is such that we often mistake luxury for necessity. The inter-national distribution of wealth is grossly unfair. There are many poor countries that suffer from shortages of energy that they need for mere survival. Who will benefit from the development of the northern resources? Most of this energy will be consumed by our cities and industries. We are fat and rich. There are millions who are dying for lack of such resources. Is this just?

Our government, the oil companies, and many sectors of the industrial community-- they tell us that we need the untapped resources of the north. I think now is a good time to take a very serious look at what we do need. We consume energy at an extravagant rate. Consider the wastage in our country. It is shocking! We have treated our world with tragic irresponsibility.

Our culture places great emphasis on profit and money. There is a feeling among us that as long as a person pays for energy he is entitled to squander or waste whatever he has bought. We treat all our natural resources in this manner—

energy, land, water, food. This is a very dangerous attitude. One cannot eat money! Nature does have limits and we are exhausting her with our exorbitant demands. The resources of the north are non-renewable. We do not seem to understand this. Non-renewable means that when they run out, that is it-- no more! Then it doesn't matter how much money we have or what marvellous profits we have made.

There are many who voice the need for haste in the construction of the pipeline. They speak of the energy crisis and everyone panics. But we seem to forget that we caused the energy crisis. Instead of exploiting more resources to feed our industrial appetites, we must begin to change the kind of thinking and behaviour that causes these shortages. We cannot continue to devour energy at the rate we have and are at present. We must change now-- yesterday! If the pipeline goes ahead without drastic changes in our use of these precious materials, without careful regulation of the speed of their extraction-- Mr. Berger, what will be left?

CONCLUSION

Sir, I am a child. This is the world that my generation will inherit. I am sure we will try-- as no doubt you are trying, as no doubt all past generations have tried-- to leave the world a little better than we found it. But for my generation it is imperative that we do so, or we may be the last.

I am beginning to look around myself and I see a world that is full of injustice and misery and filth. I see the selfishness, the apathy, the ignorance--and it frightens me. It frightens me terribly. But-- perhaps because I am a child-- I can cling to my idealism and hope. I believe that justice is greater than profit. I believe that the land and its abundance are sacred gifts of God. I believe that people are still more important than money.

The decisions regarding the McKenzie Pipeline are among the most crucial facing our nation today. They will help determine which path we take to the future. We are at a crossroads. The path of materialism and greed must end in disaster. The path of love and respect for human dignity and concern for our natural environment-- this may bring a better world.

Please, tell the government we look to them to choose a path and lead the way.

Thank-you.

C617

SUBMISSION

BY

THE NOVA SCOTIA FEDERATION OF LABOUR, C.L.C.

IN SUPPORT OF BRIEF OF
CANADIAN LABOUR CONGRESS

TO

MR. JUSTICE THOMAS R. BERGER

MACKENZIE VALLEY PIPELINE INQUIRY

JUNE 1976

S U B M I S S I O N

BY

THE NOVA SCOTIA FEDERATION OF LABOUR, C.L.C.

IN SUPPORT OF BRIEF OF
CANADIAN LABOUR CONGRESS

TO

The Justice Thomas R. Berger

MACKENZIE VALLEY PIPELINE INQUIRY

June 1976

Mr. Justice Thomas R. Berger
Commissioner
MacKenzie Valley Pipeline Inquiry

Mr. Commissioner:

The Nova Scotia Federation of Labour is a Federation of all local unions in the Province affiliated to the Canadian Labour Congress. The Federation is chartered by the Congress as well.

Our terms of reference and/or primary jurisdiction are in the field of matters of concern provincially, however, we are not confined to that field.

We hasten to point out that in matters of national nature and concern, we generally make our views known to the C.L.C. who in turn speak on these matters on our behalf. Examples of such concerns are Canada Pension, Unemployment Insurance, and all federal labour legislation.

The Executive of this Federation feel that because of the great national importance of the MacKenzie Valley Pipeline, if we were to remain silent and let Congress make all our representation it may appear to your Commission and to the Public and perhaps as important as well it may appear to the Federal Government that we have no views on this subject, such an assumption would be furthest from the truth, so we are appearing here in this short presentation, enumerating some of the points we believe of greatest importance. By so doing, we will not conflict with any representation made at a later date by our parent body, the Canadian Labour Congress. The representation they make will be more comprehensive than ours and will speak for the Canadian Labour Movement.

The long standing policy of Congress has been the National ownership of energy resources and all modes of transmission of that energy. That fact will probably permeate any proposal, suggestion,

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Mackenzie Valley Pipeline Inquiry

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OR RECOMMENDATION CONTAINED IN THE POINTS BROUGHT OUT IN THIS SUBMISSION.

WE BELIEVE THE FIRST MATTER TO BE CONSIDERED BEFORE ANY STEPS CAN BE TAKEN TOWARD DEVELOPMENT IN THE MACKENZIE DELTA REGION ARE THE RIGHTS OF THE NATIVE PEOPLES AND THE SETTLEMENTS OF THEIR CLAIMS TO THEIR SATISFACTION.

IT WOULD APPEAR THAT CASH SETTLEMENT OR LAND PURCHASE ARE NOT OF PRIME IMPORTANCE TO THE NATIVE PEOPLE, IT WOULD APPEAR THAT THEY ARE MORE INTERESTED IN HAVING THEIR LANDS SET ASIDE FOR THEIR USE FOR FUTURE GENERATIONS WITHOUT THE ENCROACHMENT OF THE AGE OF TECHNOLOGY AND THE DESTRUCTION IT BRINGS TO VIRGIN REGIONS.

WE MAKE NO EFFORT TO LIST THEIR CLAIMS OR TO MAKE ANY OR ADD ANY, THE NATIVE PEOPLE IN CANADA TODAY UNLIKE THEIR FOREFATHERS ARE QUITE ABLE TO MAKE THEIR OWN CASE FOR JUSTICE AND ALSO UNLIKE THEIR FOREFATHERS, THEY NOW HAVE THE SUPPORT OF THE VAST MAJORITY OF THE "WHITE MAN" TO SEE THAT THEY GET JUSTICE THIS TIME AROUND.

THAT PUTS THIS FEDERATION IN SUPPORT OF THEIR DEMANDS FOR JUSTICE.

AS THESE POINTS ARE BEING PUT TO PAPER THE CANADIAN COUNCIL OF CHURCHES MADE PUBLIC THEIR SUPPORT FOR THE NATIVE PEOPLE AND WHILE WE HAVE NOT HAD TIME TO EXPLORE THEIR POSITION, WE BELIEVE THE FACT THAT THEY ARE SPEAKING OUT IN SUPPORT OF THAT POSITION SHOWS THE CONCERN AMONG CANADIANS ON THIS MOST IMPORTANT PROPOSAL.

WE ARE NOT CONVINCED THAT PROPER STUDIES HAVE BEEN CONDUCTED TO DETERMINE WHETHER THIS IS THE PROPER TIME TO TAP THE RESOURCES IN THAT AREA. WE HAVE BEEN TOLD SO MANY STORIES BY THE LARGE COMPANIES OPERATING IN CANADA AND UPON WHOM OUR GOVERNMENT DEPENDED TO ASSESS RESERVES, THAT WE SERIOUSLY DOUBT FIGURES AND PROPOSALS

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NOW PUT FORTH.

IS THERE SUCH A SHORTAGE IN CANADA THAT WE NOW MUST DEVELOP THE MACKENZIE DELTA AREA, OR IS THE DEVELOPMENT BEING EXPLOITED AND DEVELOPED PURELY FOR THE PROFIT MOTIVE AND TO SERVE THE AMERICAN MARKET.

THE PROPOSALS PUT FORTH BY THE COMMITTEE FOR AN INDEPENDENT CANADA ARE WE BELIEVE WORTH LOOKING INTO. SOME OF THE QUESTIONS POSED NEED ANSWERS BEFORE WE GET INVOLVED IN SUCH A VENTURE.

WHAT IS KNOWN BY WAY OF RESEARCH ABOUT THE EFFECTS OF THIS LARGE DEVELOPMENT ON THE ECOLOGY OF THE AREA?

FROM WHAT WE CAN GATHER, VERY LITTLE GUARANTEE CAN BE MADE THAT THE ECOLOGY WILL NOT BE UPSET.

THERE HAS BEEN SPECULATION THAT THE HEAT GENERATED FROM THE TRANSMISSION THROUGH THE LINE WILL PERMANENTLY DAMAGE THE PERMA-FROST TO THE EXTENT THAT A TROUGH OF SLUDGE WILL BE FORMED THAT COULD UPSET THE WHOLE ECOLOGY OF THE AREA FOR MILES ON EACH SIDE OF THE PIPELINE. SUCH DAMAGE WILL BE OF A NATURE THAT COULD HAVE EFFECTS ON ALL THAT REGION OF THE COUNTRY.

WE BELIEVE THAT THE GRAVE UNCERTAINITY ABOUT THE EFFECTS OF SUCH A PIPELINE ARE SUCH THAT THIS MATTER ALONE IS SUFFICIENT REASON TO DEFER ANY PIPELINE DEVELOPMENT UNTIL SUFFICIENT RESEARCH IN ALL THAT ASPECT OF THE DEVELOPMENT IS CARRIED OUT.

THERE APPEARS SOME DOUBT AS WELL AS TO WHETHER THE RESERVES ARE SUFFICIENT IN THE AREA TO VENTURE INTO SUCH A DEVELOPMENT NOW WHEN THE NEEDS OF THIS COUNTRY COULD BE IN JEOPARDY BEFORE THE TURN OF THE CENTURY. WE CANNOT AFFORD THE LUXURY OF GETTING RID OF OUR RESERVES TO SATISFY PRESENT DAY NEEDS OF THE UNITED STATES WHILE

.... 4

NOW PUT FORTH.

Is there such a shortage in Canada that we now must develop the Mackenzie Delta area, or is the development being exploited and developed purely for the profit motive and to serve the American market.

The proposals put forth by the committee for an Independent Canada are we believe worth looking into. Some of the questions posed need answers before we get involved in such a venture.

What is known by way of research about the effects of this large development on the ecology of the area?

From what we can gather, very little guarantee can be made that the ecology will not be upset.

There has been speculation that the heat generated from the transmission through the line will permanently damage the permafrost to the extent that a trough of subsoil will be formed that could upset the whole ecology of the area for miles on each side of the pipeline. Such damage will be of a nature that could have effects on all that region of the country.

We believe that the grave uncertainty about the effects of such a pipeline are such that this matter alone is sufficient reason to defer any pipeline development until sufficient research in all that aspect of the development is carried out.

There appears some doubt as well as to whether the reserves are sufficient in the area to venture into such a development now when the needs of this country could be in jeopardy before the turn of the century. We cannot afford the luxury of betting our reserves to satisfy present day needs of the United States while

THEY STILL HAVE ADEQUATE SUPPLIES OF OIL AND NATURAL GAS "CAPPED" FOR FUTURE USE, WHEN THE LESS EXPENSIVE SUPPLIES ARE DEPLETED.

WE BELIEVE THAT BEFORE ANY DEVELOPMENT BEGINS ON THE CONSTRUCTION OF A PIPELINE IN DEPTH EXPLORATION OF ALL ALTERNATE METHODS OF THE TRANSMISSION OF GAS SHOULD BE EXHAUSTED.

THERE MAY BE MUCH SAFER MEANS BY USE OF A SHORT PIPELINE FROM THE SOURCE TO SEAPORT AND MAY INDEED BE FAR SAFER THAN THE PIPELINE.

WE WOULD THINK THAT THE BUILDING OF SUPER LIQUIFIED NATURAL GAS CARRIERS COULD BE ONE METHOD WHICH WOULD NOT ONLY BE MUCH CHEAPER BUT ALSO MUCH SAFER. THE THREAT TO ENVIRONMENT WOULD BE LESSENED TO A GREATER EXTENT BY SUCH MEANS. THERE WOULD BE NO THREAT TO PERMA-FROST SUCH AS WOULD BE PRESENT WITH THE RUPTURE OF ANY SECTION OF A PIPELINE UNDER THE PERMA-FROST OF THE DELTA AREA.

CONSIDER THAT THE PROVEN RESERVES IN THE MACKENZIE DELTA AT 6 - 7 TRILLION CU. FT. AND THE RESERVES OF APPROXIMATELY 20 TRILLION CU. FT. IN THE ARCTIC ISLANDS AREA COULD NOT BE SERVICED BY THE PROPOSED PIPELINE AT THIS TIME LIMITS THE VALUE OF THE ENTIRE PROJECT.

A FLEET OF 20 LARGE LIQUIFIED NATURAL GAS CARRIERS WOULD BE SUFFICIENT FOR SUCH SERVICE. THE PROPOSED COST OF APPROXIMATELY 600 MILLION WOULD BE MUCH MORE ECONOMICAL AND OPERATIONAL COSTS WOULD BE OFFSET FROM DEBT CHARGES OF THE ESTIMATED COST OF AT LEAST 6 BILLION DOLLARS FOR THE PIPELINE.

IF OUR INFORMATION IS CORRECT, THE UNITED STATES PLANS TO USE LIQUIFIED NATURAL GAS CARRIERS AT THE SOUTHERN ALASKA TERMINAL OF THE PIPELINE FROM PRUDHOE BAY.

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A SINGLE PIPELINE OF THE LARGER SIZE PIPE WOULD DENY CANADIAN LABOUR CONTENT WHILE THE SMALLER SIZE PIPE WHICH WE CAN PRODUCE IN CANADA WILL RESULT IN A "TWINING" OF THE LINE WITH DOUBLE THE RISK TO THE ENVIRONMENT. NOT ONLY WOULD WE BE SUPPLYING NATURAL GAS FROM OUR RESERVES FOR THE BENEFIT OF THE UNITED STATES, BUT TO ADD INSULT TO INJURY, WE WOULD BE GIVING THE MAJOR MANUFACTURING WORK ON SUCH A PIPELINE TO WORKERS IN THE U.S.A.

HISTORICALLY, ANY WORK IN THE NORTH IN THE PAST HAS NOT GONE TO NATIVE PEOPLE. THE EXCUSE THAT THEY ARE NOT QUALIFIED FOR SUCH WORK REFLECTS ITSELF ON GOVERNMENT AND GOVERNMENT PAID JOB TRAINING PROGRAMS AND NOT THE NATIVE PEOPLE. WE HAVE ALREADY SEEN THEREFORE, WORK IN THE NORTH IN THE PAST, VERY HIGH PAID JOBS, GO TO OUTSIDE WORKERS WHILE MENIAL WORK BY AND LARGE GO TO NATIVE PEOPLE.

THE CONSTRUCTION OF 20 LIQUIFIED NATURAL GAS CARRIERS OF THE TYPE MENTIONED ABOVE, WOULD BE BUILT IN CANADIAN SHIPYARDS BY CANADIAN WORKERS. IF THE CANADIAN MERCHANT MARINE BECOMES A REALITY, THE SHIPS WOULD BE MANNED BY CANADIAN SAILORS.

WHILE WE RECOGNIZE THAT THERE ARE SOME RISKS INVOLVED IN THE SHIPMENT OF NATURAL GAS OR CRUDE OIL BY WATER TRANSPORT ANY ACCIDENTS OCCURRING WOULD BE LIMITED AND CONFINED TO A SINGLE AREA AND WOULD BE PREFERABLE TO THE POTENTIAL DAMAGE OF A MAJOR PIPELINE DISASTER.

SUCH A FLEET OF LIQUIFIED NATURAL GAS CARRIERS COULD ALSO TAKE ADVANTAGE OF THE WASTED NATURAL GAS PRESENTLY BURNT OFF OR ALLOWED TO ESCAPE INTO THE ATMOSPHERE IN OFFSHORE WELLS WHERE CURRENT EXPLOITATION IS NOW CONFINED TO CRUDE OIL.

THE OPERATING COST OF LIQUIFIED NATURAL GAS CARRIERS WOULD BE OFFSET BY THE SAVINGS OF DEBT INTEREST ON THE 6 BILLION OR MORE PIPELINE PROJECTED COST.

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LARGE CAPITAL PROJECTS SUCH AS THE MULTI-BILLION PIPELINE WILL DIVERT NEEDED PRIVATE AND PUBLIC CAPITAL FROM UNDEVELOPED AREAS SUCH AS THE ATLANTIC REGION AND THIS COULD BE ANOTHER NEGATIVE CONTRIBUTING FACTOR TO OUR REGIONAL ECONOMY.

LASTLY, WE OPPOSE THE MACKENZIE VALLEY PIPELINE PROJECT ON THE BASIS THAT THIS IS AN EXTENSION OF THE "CONTINENTALISM" POLICIES OF THE U.S.A. AND ACCEPTED BY HIGH-RANKING CANADIAN GOVERNMENT AND BUSINESS REPRESENTATIVES.

THIS HAS RESULTED IN THE GIVEAWAY OF THE WATERS OF THE COLUMBIA RIVER, CHURCHILL FALLS POWER, SYNCRUDE TAR SANDS, THE UNFAIR COST SHARING OF THE SEAWAY AND OTHER RESOURCES OF OUR COUNTRY.

IN THIS AGE OF MULTI-NATIONAL INFLUENCE AND POWER EVEN NATIONAL GOVERNMENTS FIND IT DIFFICULT TO ASSERT NATIONAL SOVERIGNITY AND WE FEEL THAT THE END RESULT OF THE MACKENZIE VALLEY PIPELINE PROJECT AS CURRENTLY PROJECTED WILL BE ANOTHER STEP ALONG THE ROAD TO THE DETRIMENT OF OUR INDEPENDENCE AND NATIONAL IDENTITY.

RESPECTFULLY SUBMITTED,
NOVA SCOTIA FEDERATION OF LABOUR, C.L.C.
GERALD YETMAN, PRESIDENT
J. K. BELL, SECRETARY-TREASURER
LINDA GALLANT, VICE-PRESIDENT
J. D. HOOD, VICE-PRESIDENT
FREDERICK BURGESS, VICE-PRESIDENT
GERALD JOLLYMORE, VICE-PRESIDENT
LAWRENCE WILNEFF, VICE-PRESIDENT
NORMAN HEBERT, VICE-PRESIDENT
CHESTER SANFORD, VICE-PRESIDENT-AT-LARGE
MILFRED HUBLEY, VICE-PRESIDENT-AT-LARGE
LEO F. MCKAY, EXECUTIVE SECRETARY

OPEIU-225

C619

A BRIEF TO BE PRESENTED BEFORE THE MACKENZIE VALLEY PIPELINE INQUIRY

HALIFAX, N.S. JUNE 8th, 1976

Prepared by
The Industrial Cape Breton Council
of Churches

Sydney, Nova Scotia

Mr. Commissioner, the Industrial Cape Breton Council of Churches is grateful for this opportunity to voice support for the concerns of the Native peoples as they relate to the proposed MacKenzie Valley Pipeline.

On the occasion of a regular stated meeting of the Industrial Cape Breton Council of Churches on March 9th 1976, the membership met with several members of the Southern Support group and as a consequence became more knowledgable of the issues which are disturbing the population of the areas where Northern development is projected. We in Cape Breton are geographically remote from the regions of our land where alleged exploitation is a likelihood unless wise and thoughful consideration is given to the multitude of protests. We have adopted a rational position on this issue, free from emotion, based upon the facts which we have been made aware of. During the course of our meeting on March 9th we unanimously passed a resolution in support of the Native peoples in the MacKenzie Valley area. Copies of the resolution were directed to Prime Minister Pierre Trudeau, Hon. Judd Buchanan, Minister of Indian Affairs and Northern Development, and local members of the House of Commons.

We concur with the brief prepared jointly by the Interchurch Project on Northern development entitled "Some Moral and Ethical Considerations Relating to the MacKenzie Valley Pipeline; A Call for a Moratorium" which was submitted to your Commission in June of this year. Furthermore we subscribe to the resolution passed on the occasion of the Canadian Council of Churches Triennial Assembly in the town of Glace Bay on April 27th 1976. The substance of the resolve was an

endorsement of the stand taken by Project North on behalf of the Anglican Church of Canada, Canadian Catholic Conference and the United Church of Canada.

It is for these reasons that we urge consideration be given by your inquiry and by the people of Canada, for a moratorium on all major Northern resource development projects, including the MacKenzie Valley Pipeline, so that both Government and people may have an opportunity to study and work together toward alternative lifestyles with emphasis upon conservation rather than consumer attitudes.

It is our belief that the development of the MacKenzie Valley Pipeline must be carried out in a moral and ethical manner without distortion of decisions made in terms of economics and political expediency. Throughout the years since Confederation it has been characteristic of Canadians to defend the rights of minorities if we are to exist in a society based upon justice and equality.

Mr. Commissioner, we do not wish to burden you with statements which have already been submitted in briefs referred to in the foregoing text. It has been pointed out that we agree with their contents.

In conclusion Sir, we wish to affirm our commitment to wholeheartedly support the Inuit and Dene peoples in their efforts to achieve justice.

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A PRESENTATION OF THOUGHTS

TO THE MACKENZIE VALLEY PIPELINE INQUIRY

June 8, 1976 Halifax, N. S.

Graydon Nicholas

Indian From New Brunswick

Mr. Commissioner -

(a) Indian Reserves are valued by the Indians as more than mere possession, use and occupation. Indian lands have been in existence since time immemorial. Indians used these lands for their very livelihood and survival. The land provided the Indians with food, shelter, recreation and economy. These lands have been used not only by the present Reserve members but also for past generations of an indefinite period of time.

(b) Within the present limits of todays Indian Reserves, the Indians enjoy the absolute right to hunt, to fish and to develop the lands as they see fit. These ideas of development may be social, economic and recreational. The initiative to develop and control the lands must be within the grasp of the Indians.

(c) In the past, loss of Indian lands has resulted from the need for that land by the non-Indian, being it individual, government and corporations. The use of these lands satisfied the wants and needs of these different autonomies. But very little beneficial results were returned to the Reserves. Much of the lands taken or obtained from the Indians and used for a public purpose, was sold for a meagre amount of dollars. This money was never used to extend the other boundaries of the Reserves. The replacement costs were much higher and the Government would not, as a policy, purchase such additional lands for the benefit of the Indians.

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(d) The monies realized by sale, lease or other use of Indian lands was held in trust by the Federal Government and the additional revenue generated by these capital dollars was ridiculously low. The Reserves were then eligible to apply for the expenditure of the revenue monies. There had to be a close accountibility of the spending of the revenue monies. The Indians had no control as to the plans for spending. Budgets were dictated by the Department of Indian Affairs.

(e) Indians, therefore, saw very little benefits of the disposal of their lands. With no growth in land, and a rising rate of population, living space became a major concern. The housing supply was not adequate for the demand required by the Indians. Lot sizes began to be regulated by the planning, development and implementation of subdivisions. Certificates of possession were required and each outlined the lot description, supported by surveyed distances. Indians realized that possession of so much land was being forced upon them. There was a limit to how much land each person could possess.

(f) With the growth and spurt of economic development, Indian land was further being jeopardized by conditions attached to loans and grants. Indians were required to use as collateral all property owned by them. This included Certificate of Possession. Furthermore, the Indian applicant had to sign a waiver clause which in effect resulting in him signing the protective provisions of the Indian Act away. There are no

problems created when loans are being repaid as scheduled. The difficulty arises and complications appear when there is a default. A continuous default with no intention or ability to pay the loan will leave no recourse to the lender (i.e. DIAND) but to realise on the collateral and security of the loan. Hence in this situation, Indian lands can be seized and put to use as deemed necessary by the Government.

(g) With all eyes and attention focused to the potential development of alleged needed resources in the North, Indians across this country must denounce the action of Major Oil Corporations, Financial Institutions and the Governments involved. When the Europeans first made their initial contact and establishment settlement, the prime concern was the bountiful fur trade. Furthermore, it seemed like there was plentiful land with a friendly host. As this economic fact was exploited and developed further into the interior, the Indians began to realise the objective of the friendly invader. Furthermore, the friendly invader was at times often assisted graciously by the various religious denominations. How much of this has changed since the early 1600's?

(h) With the influx of greater numbers of people of every trade, the Indian was quickly outnumbered and soon thereafter forgotten. The law was written in the language of the newcomers. Indians who complained unfair and unjust treatment by the representatives of Government, and by the settlers were told to share their land and resources. In fact, the Government

authorities even were bold and generous enough to write into Peace Treaties and Royal Proclamations that Indians living in harmony would be guaranteed their lifestyle, ie., hunting, fishing, roaming and living off the land. It makes one shudder to think just how worthless many of these documents have been as presently interpreted by the Courts, the Governments and other people in the sacred position of trust! Other than their historical and constitutional frameworks, to the Indians, it is more valuable to have them interpreted legally in their favor. Surely the Equity must work for us as well.

(i) Today, the Indians, the Indian Organizations as well as the people who live on Reserves, have every day contact with the concept of aboriginal right. This aboriginal right to me can be summed up in this way:

> "The Indians long lived here since time immemorial; the French came and lived with the Indians. Next came the English. There were battles between the two European Sovereigns and eventually the British Crown defeated the French. Now the British Crown must settle with the Indians for their aboriginal rights."

The concept of ownership by Indians is very much exemplified by today's Indian Reserves. Ownership is communal and not individual. Indians today befitted from our ancestors and we must preserve for the future generations. We have the right to determine not only our present life style but also what

environment will be suitable to our children.

(j) I would wholeheartedly support the Indian people of the North, the heirs of their ancestors in their determination of their future. Although, I would not impose my standard or valves to them, I would suggest they they pose one question:

"Who wants this development?"

The answer, not an easy one, will surely indicate to them who will be the beneficiaries of development, who will be left behind in granteed rights, who will be the forgotten, and who will be the displaced.

(k) Indians have adapted in living with the elements that vary from region to region in Canada. Indians have survived because not challenging nor exploiting nature, has been a way of life. Development in the North can only effect Indians and inflict undetermined hardships for many generations. Who will be the responsible parties? Who is willing to share this burden? The Governments have in the past admitted to some of this harm, but what happens when money is not sufficient to cover the cost of needed houses? needed medical treatment? needed facilities to encourage education? It has always been the Indians who have suffered the most.

(l) I want to thank this Commission for allowing the Indians to voice their concerns, their ideas and their thoughts about the exploitation and development of the North. In the early 1600's, Indians complained and voiced their objections to the Government representatives. At that time, they could neither read nor write French and English. They relied solely on the discretion and judgement of the law-maker. They had to

trust that their grievances would be resolved. I will not attempt to list the numerous timesthat such incidents took place.

(m) Today this Commission should not necessarily be given the burden to shoulder and reinterpret the wrongs and misdeeds of past Governments. A Commission, such as this, with its inherent legal guidelines is merely a vehicle which the Government has available for its advise. There is not guarantee that the findings, and the recommendations of the Committee will be wholeheartedly endorsed and accepted by the Government in Ottawa. Instead, as was very plainly pointed out by you, Mr. Justice Berger, the final and ultimate decision will be political. If the Indians are grieved and disappointed by the Government action, their only resort will be to the Courts of Law.

(n) Indians must not be pressured to the position where they are required to extinguish their aboriginal rights. The Government has already done this to the people of James Bay with present rumors circulating the land issue in the Yukon. This Commission should on record support that Indians must retain their aboriginal rights and also be allowed to develop and live the way that they want. We could not be all that bad because all our ancestors had to do was turn their backs and support to the European. Survival would have been a matter of days. Again I want to thank you, Mr. Commissioner, and do not envy the ultimate decision that you must render.

ecology action centre

forrest building, dalhousie university, halifax, nova scotia 422-4311

C622

BRIEF SUBMITTED TO THE

MACKENZIE VALLEY PIPELINE INQUIRY

BY THE ECOLOGY ACTION CENTRE

JUNE 8, 1976
HALIFAX, NOVA SCOTIA

We at the Ecology Action Centre represent a Nova Scotia citizens environment group based here in Halifax-Dartmouth but with membership throughout the province. The central question we wish to address ourselves to, however, is not the environmental impact of the proposed pipeline. Other environmentalists who have done research in the North, and the native people of the northlands, are better qualified to evaluate in detail what will happen to the flora and fauna, the land and the people of the Mackenzie Valley should the pipeline be constructed.

The questions we wish to address ourselves to are, in broadest terms, what are the implications of the Mackenzie Valley gas pipeline for our own way of life here in the South? What impact will the pipeline have on southern Canada? To answer these questions, even partially, we make certain generalizations and value judgements about our culture's lifestyle.

In general, our society has a high-energy, high-impact way of life. We are using up depletable resources, notably energy-related resources such as petroleum, metals and minerals at a rate unprecedented in human history. A corollary of this massive consumption has been, and is now, a waste disposal and pollution problem of global dimensions.

this paper contains recycled post-consumer waste

Organizations such as the Club of Rome and the Conserver Society Group within the Science Council of Canada point out that these two physical constraints -- resource depletion and environmental degradation -- will at some point demand serious alterations in our lifestyle. Just when will a reversal of overconsumption become imperative is not clear, but many believe that we are now within sight of these two physical limitations on our way of life.

> *It is our position that every further step we take down the the road of high energy use -- a route of which the Mackenize Valley gas pipeline is part and parcel -- is a step in the wrong direction, a direction which, as the physical constraints are approached, will be increasingly difficult to find our way back from. It is our position that an energy policy for Canada which is sustainable over a long period of time, and which is therefore based on energy sources which are both renewable and have low environmental impact, should be a first priority.*

In addition, energy conservation must play a significant role in any future strategy. The Science Council Background Report No. 33, July, 1975 by Dr. Fred Knelman, states that "more than 50% of the energy supply in Canada is discarded as waste". The Report indicates that "given a serious program of voluntary and mandatory 'demand management' a saving of 30% (of that year's projected energy consumption) should be possible by 1995". The Ecology Action Centre endorses the following analysis by Dr. Knelman.

> "We argue that such a conservation program is not in conflict with economic goals or objectives and is neither for nor against "historical" growth. We go further and suggest that there are economic benefits both direct and indirect in such a program. Increased efficiencies mean lower production costs, while reduced energy consumption reduces environmental control costs and capital investment which often means foreign investment. Other analysts have gone further

> and suggested that employment is negatively correlated with energy intensive production and that conservation and reduced consumption could increase employment, a major problem in this and other economically developed countries.... *We have recommended that all our tacit assumptions concerning energy consumption be critically re-examined in order to develop the best national energy policy that also allows adaptations as options and conditions change, in other words, a clear, flexible national energy policy".* (Emphasis by EAC).

It is crucially important to examine all our options including the present pipeline proposal. For example, we are today presented with the decision as to how we are to exploit only one of several frontier resources. There are, however, other frontier resources that can be made available within the forseeable future -- non-renewable hydrocarbons of the Artic Islands and those of the Labrador Shelf could potentially be considered. Beyond that we have local petroleum and gas resources in our Sable Island deposits and in the Prince Edward Island East Point structure.

At some point in the future we may wish to exploit one or several of these non-renewable resources. If all options were available then we could more wisely choose among options on the basis of minimizing environmental and social impact and mazimizing sociatal benefits. If one option is closed, such as the Mackenize Valley Pipeline and Beaufort Sea/Dealta resource then the others may well become impossible. For

example, can Canada afford to build both Artic pipelines and the Labrador pipeline? Along with Fundy Power dams?

We wish to draw attention to an address by Dr. Michael A. Goldberg called Energy Supply and Economic Growth which was presented as part of the H.R. MacMillan Lectures for 1971 in Vancouver, British Columbia. Dr. Goldberg makes the point that the cost of deferring a decision in a situation of uncertainty can be calculated, along with the likelihood that the decision would be a better one in the future when we have more information and experience to act upon (that is, less uncertainty). And I quote:

> *"These ideas relate to keeping our options open, and to being willing to pay for the privilege of retaining the possibility of making a decision. There is a value to having alternate decisions open to us now and in the future. I suspect, particularly with investments like large scale hydro dams (and pipelines), that we do foreclose a large number of options. In a world of rapid population and economic growth I further suspect that these options are worth retaining. The cost of foreclosing these options should be included in the decision whether or not we build these facilities, and if we do build them, the costs of precluding these future decision points should be included in our energy costs."*

Indeed, there are uncertainties about the Beaufort (p. 152); even the minister of Indian and Northern Affairs has publicly expressed doubt as to whether there is enough gas to fill the presently proposed pipeline.

"It is our position that this commission evaluate the costs of closing our options if the Mackenzie pipeline is built, and that these costs be incorporated in our energy costs. It is our subjective impression,

however, that a deferral of northern pipeline construction for a specified length of time would be a just and wise course and one that will permit us to extend our options in the future.

As conventional energy sources now in use become increasingly expensive, we will be forced to choose one of two broad directions: either to go heavily after "frontier resources" such as Artic gas and oil or tar sands development, in order to permit "business as usual" to continue a little longer -- which is what the Mackenzie pipeline signifies -- or else to pursue reductions in energy use, increased efficiency and substitutions for current sources based upon renewable technologies. It is the position of physicist and energy strategist Amory Lovins in his paper Energy Strategy: The Road Not Taken?" written in February 1976, that it will be impossible to pursue both of these courses. Because of the enormous capital expenditures involved in either scenario, one percludes the other. (A copy of Mr. Lovins' paper is appended to this brief). *It is our position that this 'either/or' decision in energy policy is substantially correct and that we must therefore bring to bear on it other facts and values, such as concerns for sustainability, for the environment, for justice, and for the quality of life in the South and in the North.*

It is worth noting here that the federal government has a budget of only $113 million in 1975-1976 for energy research. Only 1.4% of that or $1.6 million are for renewable energy research, a meagre sum in spite of the great potential of such technology. This million and a bit spent on renewable energy research is one ten-thousandth of the cost of this pipeline. Has the choice already been

made in favour of a high-energy society?

We conclude our remarks by emphasing the desirability of a society based on values other than the material ones which seem to dominate so much of our own lifestyle. Values such as status, speed, comfort and convenience almost always take priority when they come in contact with other, more traditional values including simplicity, diversity, neighbourliness, craftsmanship and humility.

Perhaps we as a nation should develop techniques to assess what is "enough" or "sufficient" in material terms. We strongly advocate active participation of all citizens in any decision making process in society. A forum such as this hearing is essential for developing grassroots democracy. It is concomitantly important to note that information is an essential factor to any decision-making process. Broad decisions related to energy policy are partially technical in nature. It is reprehensible on the part of scientists and technocrats to say that we, as citizens, do not have the technical expertise to make decisions. It is their job to provide us with data on the various technical decisions which are open to us and their interpretation of the consequences. *It is our position that we, as Canadians, must have access to all technical information related to Canada's energy policy, and that we must have direct involvement in the political decisions about the directions that policy will take.* The People of the North must also be part of this process. They have values and a society they want to

preserve and determine. *It is our position that native land claims must be settled before pipeline construction. Finally, it is our position that the federal government allow for adequate and proper involvement of the people of the North in determining the terms under which oil and gas exploration and pipeline construction may proceed.*

PRESENTATION OF

F. T. HOLLANDS

GENERAL MANAGER,
EMPLOYEE RELATIONS AND PUBLIC AFFAIRS

CANADIAN ARCTIC GAS PIPELINE LIMITED

BEFORE THE BERGER INQUIRY

HALIFAX, JUNE 8, 1976

THANK YOU, SIR, FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU. I WOULD LIKE TO ADDRESS SOME OF THE ISSUES WHICH HAVE BEEN RAISED TODAY AND THROUGHOUT YOUR HEARINGS, ISSUES OF IMPORTANCE TO ALL CANADIANS.

ANY PROJECT OR ANY DEVELOPMENT IN THE NORTH, IT SEEMS TO ME, MUST RECOGNIZE THE ASPIRATIONS AND THE CONCERNS OF NORTHERNERS AND DO EVERYTHING POSSIBLE TO SEE THAT THESE ARE MET. BUT IT CANNOT DO SO, SIR, WITHOUT HAVING REGARD TO THE ASPIRATIONS AND CONCERNS OF THE WHOLE NATION. WHAT ARE THESE CONCERNS?

FIRST, LAND CLAIMS AND THE NATIVE PEOPLE OF THE NORTH.

ARCTIC GAS HAS REPEATEDLY AND PUBLICLY URGED AN EQUITABLE AND JUST SETTLEMENT OF NATIVE LAND CLAIMS AT THE EARLIEST POSSIBLE DATE. THIS MUST BE SETTLED, IN OUR OPINION, WHETHER A PIPELINE IS BUILT OR WHETHER A PIPELINE IS NOT BUILT.

THE INDIANS AND METIS OF THE NORTHWEST TERRITORIES PLAN TO COMPLETE THEIR PROPOSAL AND SUBMIT IT TO THE FEDERAL GOVERNMENT THIS YEAR. WITH ALL PARTIES ACTING IN GOOD FAITH, IT SHOULD BE POSSIBLE TO REACH A SETTLEMENT PROMPTLY, BEFORE CONSTRUCTION OF THE PIPELINE.

ENERGY OPTIONS AND MORATORIUMS HAVE ALSO BEEN DISCUSSED CONSIDERABLY AND I WOULD LIKE TO COMMENT ON THESE ISSUES.

LET US LOOK AT THESE ENERGY OPTIONS.

FIRST, CONSERVATION MUST BE PRACTICED. WE CAN REDUCE THE RATE OF GROWTH IN OUR ENERGY CONSUMPTION BUT WE CANNOT REDUCE OUR TOTAL CONSUMPTION. THE FACT IS THAT OUR POPULATION IS GROWING. THE FACT IS THAT OUR LABOR FORCE IS GROWING. THE FACT IS THAT THE NUMBER OF PEOPLE WANTING THEIR OWN HOMES IS GROWING. THIS GROWTH IS NOT BASED ON EXCESSIVE LIFESTYLES. IT IS BASED ON POPULATION STATISTICS.

I CAN ONLY CONCLUDE THAT CONSERVATION IS NECESSARY BUT IT IS NOT AN ALTERNATIVE TO THE DEVELOPMENT OF ADDITIONAL DOMESTIC ENERGY, NOR TO OUR PIPELINE PROPOSAL.

SECOND, WE HAVE BEEN VERY IMPRESSED BY THE POPULARITY OF RENEWABLE ENERGY, AS SHOWN IN YOUR HEARING. SOLAR AND WIND POWER, WILL BE HARNESSED SOME DAY AND WE BELIEVE THAT CANADA CAN BENEFIT FROM FURTHER RESEARCH. THE FACT REMAINS,HOWEVER, THAT THESE FORMS OF ENERGY ARE NOT AT THIS POINT FINANCIALLY ATTRACTIVE, NOR ARE THEY FEASIBLE FOR WIDESPREAD APPLICATION. THEIR USE WILL INCREASE GRADUALLY BUT, AGAIN, THEY ARE NO ALTERNATIVE AT THIS TIME TO CONVENTIONAL ENERGY, NOR TO A PIPELINE.

THIRD, YOU HAVE BEEN TOLD BY SOME THAT CANADA SHOULD CURTAIL EXISTING AUTHORIZED GAS EXPORTS. YET THE NATIONAL ENERGY BOARD HAS SHOWN IN ITS 1975 REPORT THAT THIS WOULD BUY VERY LITTLE EXTRA TIME FOR GAS USERS. IT IS NOT A 10-YEAR ALTERNATIVE AND, REGARDLESS OF TIMING, IT IS NOT AN ACTION TO BE TAKEN LIGHTLY.

FROM THE FOREGOING, THERE SHOULD BE LITTLE DOUBT AS TO OUR VIEWS ON PROPOSALS FOR DELAYING THE TRANSPORTATION OF MACKENZIE DELTA GAS. I WOULD LIKE TO MAKE TWO POINTS:

FIRST, SURELY THOSE WHO RECOMMEND A MORATORIUM ARE NOT SUGGESTING THAT UNEMPLOYMENT AND WELFARE IN THE NORTH SHOULD BE MAINTAINED FOR 10 YEARS. SURELY THEY ARE NOT SUGGESTING THAT THE HUNDREDS OF NORTHERN CITIZENS NOW EMPLOYED DIRECTLY AND INDIRECTLY IN THE INDUSTRY BE PUT ON A 10-YEAR UNEMPLOYMENT PROGRAM. WE KNOW THEY DON'T INTEND THIS BUT THESE ARE TWO OBVIOUS CONSEQUENCES.

MY SECOND POINT RELATES TO CONDITIONS IN CANADA'S POPULATED AREAS. FEW PEOPLE APPRECIATE THAT MORE THAN HALF OF THE NATURAL GAS CONSUMED IN CANADA IS CONSUMED BY INDUSTRY.

JOBS ARE ALSO PROVIDED BY THE COMMERCIAL SECTOR. INDUSTRIAL AND COMMERCIAL CONSUMPTION TOGETHER EQUAL MORE THAN 75 PERCENT OF ALL THE NATURAL GAS USED IN CANADA TODAY. ALTHOUGH MORE THAN TWO MILLION CANADIAN HOMES ARE SERVICED BY THIS FUEL, THEY ACCOUNT FOR ONLY SOME 25 PERCENT OF GAS CONSUMPTION.

CANADIANS HAVE BEEN UREGED TO MODERATE THEIR LIFE STYLES SO AS TO USE LESS NATURAL GAS. SUCH SAVINGS WOULD RELATE PRIMARILY TO RESIDENTIAL CONSUMPTION, SINCE MUCH IS ALREADY BEING DONE TO CONSERVE GAS IN THE INDUSTRIAL SECTOR. FURTHER INDUSTRIAL GAS SAVINGS WOULD NECESSITATE A REDUCTION IN EMPLOYMENT. I DO NOT KNOW HOW YOU CAN ASK PEOPLE TO MODERATE THEIR RIGHT TO BE EMPLOYED.

ARCTIC GAS HAS SAID THAT THE SINGLE MOST IMPORTANT BENEFIT OF THE PIPELINE IS IN THE USE OF THE ENERGY IT WOULD TRANSPORT. AND SOME 75 PERCENT OF THE NATURAL GAS USED TODAY INVOLVES THE EMPLOYMENT OF CANADIANS. IF THIS EMPLOYMENT IS UNDERMINED BY INADEQUATE GAS SUPPLIES, CANADA'S ECONOMIC BASE IS ERODED TO THE DETRIMENT OF ALL CANADIANS, REGARDLESS OF WHERE WE LIVE OR WHAT WE BELIEVE.

EVEN ASSUMING THAT OUR EFFORTS WITH RESPECT TO CONSERVATION AND ALTERNATE USES ARE EFFECTIVE, WE WILL BY 1980 REQUIRE THE IMPORT OF CLOSE TO $3.0 BILLION WORTH OF FOREIGN OIL GROWING TO $5 BILLION ANNUALLY BY 1985. LET ME ADD THAT THESE TRADE DEFICITS IN OIL ARE OF VERY CONSIDERABLE IMPORTANCE TO ATLANTIC CANADA. THESE ESTIMATES ARE ALL BASED ON THE ASSUMPTION THAT THE PRICE FOR OPEC OIL STAYS AT ITS PRESENT LEVEL. LET US ALSO CONSIDER THE SITUATION IF OPEC NATIONS CHOSE TO CUT OFF THESE ENERGY SUPPLIES. AND LET ME ASK THOSE WHO, FROM AN ENVIRONMENTAL STANDPOINT, OPPOSE NORTHERN ENERGY DEVELOPMENT, JUST WHAT CONSIDERATION THEY GIVE TO THE MOVEMENT OF ENERGY BY SHIP ACROSS OUR OCEANS AS COMPARED TO DEVELOPING ENERGY SUPPLIES IN CANADA UNDER OUR OWN ENVIRONMENTAL CONTROL.

LET ME ALSO ASK, SIR, WHAT THE ATTITUDE WOULD BE OF THOSE WHOSE JOBS DEPEND ON ADEQUATE ENERGY SUPPLIES UNDER CIRCUMSTANCES OF INTERRUPTION OR OF PRICING COMPLETELY BEYOND OUR CONTROL.

IN CONCLUSION, SIR, OUR NATIONAL WELL-BEING REQUIRES THAT DECISIONS TO TRANSPORT MACKENZIE DELTA GAS BE MADE PROMPTLY.

HAVING SAID THAT, IT IS IMPERATIVE THAT NORTHERN CONCERNS BE MET AND RESOLVED. ARCTIC GAS BELIEVES THAT THE PIPELINE DOES NOT PREJUDICE THE FUTURE OF NATIVE PEOPLES AND THEIR CLAIMS.

WE CONSIDER THAT SOME OF THE MOST IMPORTANT EVIDENCE HEARD IN THE SOUTHERN HEARINGS WAS THAT GIVEN IN MONTREAL BY THE NATIVE AND GOVERNMENT LEADERS MOST CLOSELY INVOLVED IN THE NEGOTIATIONS LEADING TO THE JAMES BAY AGREEMENT. THIS TESTIMONY RAISES A VERY FUNDAMENTAL QUESTION WITH RESPECT TO THE RELATIONSHIP BETWEEN DEVELOPMENT AND NATIVE LAND CLAIMS. THE QUESTION IS: COULD THERE BE A SETTLEMENT IF THERE WERE NO PIPELINE PROPOSAL?

THANK YOU FOR THIS OPPORTUNITY AND WE CONTINUE TO WISH YOUR INQUIRY WELL.

THE ROMAN CATHOLIC ARCHDIOCESE OF HALIFAX

STATEMENT TO THE BERGER COMMISSION INQUIRY INTO THE MACKENZIE VALLEY PIPELINE

As Catholics in the Archdiocese of Halifax, we have recently experienced an extended period of study and reflection of some of the contemporary dilemmas of social injustice. The dignity of life, the distribution of wealth and resources, housing, education and church reform have all been examined with our Bishop's Holy Year Statement on Social Justice acting as our guide. As a result there is a greater overall awareness among our people of injustice in our society.

As Christians, we know that there is much more involved in Northern development than economic issues for Canada. There are social, historical, cultural, philosophical, moral and theological values at stake. These should all be carefully examined before final decisions are made on the matter.

It is not the purpose of this Statement to make a detailed analysis of the issues involved in the Pipeline proposals. We have neither the expertise nor the acute awareness to do this for the specific issues involved.

However, we wish to align ourselves with the clear and thoughtful statement made by the Catholic Bishops of Canada in their Labor Day Statement for 1975 - 'Northern Development: At What Cost?'

We enclose copies of our Bishop's Statement on Social Justice and the Canadian Bishops' Statement for you and with your permission would like to show an audio-visual presentation based on the Canadian Bishops' Statement.

We wish to thank you for hearing our presentation.

Rev. Monsignor Colin Campbell, V.G., R.S.W., Vicar General
Mr. Michael J. Marentette, R.S.W., Executive Director,
Catholic Social Services Commission.

N.S. Association of Social Workers

Submission to the

Inquiry into the MacKenzie Valley Pipeline

The probability that the Federal Government will approve the construction of a pipeline in the MacKenzie Valley without the approval of the Native Peoples affected raises fundamental moral issues for the people of Canada. Unless it is done slowly, and with much care, both the construction and operation of the pipeline will have horrendous effects on the economy and culture of the Native Peoples, perhaps destroying them forever as a cultural entity. Thus, we would be imposing very high social costs on a small segment of our people, presumably in the interest of the rest. Even if this presumption is correct, and the pipeline is necessary, we question the morality of forcing this sacrifice on the original peoples of Canada.

The pipeline debate separates one small group from the rest of society and tells that group that it must sacrifice "in the general good." Thus the issue appears to be the Native People standing in the way of the vast majority of Canadians. Put this way, it appears to be obviously democratic that the minority should bend to the wishes of the majority. No doubt many Canadians see the issue as simply how much money must we spend to expropriate the necessary land, how much do we have to pay "them" so that "we" can have our way.

The situation is not that simple. It is not only a question of land ownership. It is a question of a whole culture based on the use and stewardship of the land. If the land-use pattern is significantly disrupted, the culture is destroyed. If the culture is destroyed, the people lose their identity, their way of life, perhaps even their will

to life. This is especially true since we have not provided any effective means by which the Native Peoples can move to an acceptable alternative lifestyle.

Thus, the majority is not just asking the minority to name a price for its land. It is not asking the minority to put up with some temporary inconvenience. It is not asking the minority to let the majority use something that the minority is not using. Does the majority "need" more energy to keep our homes too hot, to heat our swimming pools and automatic dryers, to run our dishwashers and freezers, color tv's and stereos, our blenders and our two-ton cars? Should these conveniences and luxuries, which many have come to believe are necessities, take precedence over the lives and culture of the minority?

We question the right of the majority to demand such a sacrifice from the minority. Even in wartime, when our society felt its very existence threatened, we relied as long as thought possible on volunteers. If there is no pipeline, there is no basic threat to the majority only the possibility that our wasteful lifestyle must change, that we must conserve energy, that we must look for alternative energy sources. However, the pipeline threatens the economy, the culture, the existence of the Native People.

Can the majority demand such sacrifice from the minority, especially when the difficulties of the majority are of their own making? The Native People have neither caused nor benefited from the process which created the situation now facing us. Is it the democratic right of the majority to impose the burden of the solution on the minority? It is certainly not our moral right to do so!

We must see all the implications of the pipeline, not just "us" against "them" or "them" against "us". Too often, issues which are really moral issues are discussed and decided by segmenting people, by pitting the interests of weak groups against each other, putting things in a "we"/"they" context in which we, the majority, have justifiable rights and they, the minority are not met because they conflict with what we are told are the interests of the majority.

We see many examples of this: tax reform is almost impossible because the middle class feels that it already bears a crushing tax load to help the poor (when in fact the poor carry the heaviest tax load); the working poor are taught to despise the poor who are unable to work and increases in social assistance are fought because they would raise the payment level to that of the working poor; the consumer resists increases in minimum wages to help the working poor because it would raise prices; programmes to help the elderly, the handicapped, even women and children, are resisted because they will increase taxes and benefit a minority group and not the majority directly. Thus, to protect the interests of the majority against the needs of the minority, we all end up suffering. We are all members of minorities which are subjected to the tyranny of another majority.

It is our responsibility to speak out for the needs of the minority. We must oppose this process by which the majority not only lack sympathy for those needs, but often react with indifference and hostility to legitimate requests. We must not allow the segmentation of society into competing groups. We must identify problems, not people. We must solve problems, not create victims.

When viewed from this perspective, the issue of the MacKenzie Valley pipeline is obviously a moral issue. The "Energy Crisis" is caused by our energy wasteful lifestyle and our rush to export our accessible southern energy sources. The problem was created by the majority. We cannot, therefore, justify the imposition of the solution on the minority. They have been excluded from the benefits of our way of life. It is immoral to ask them to give up their way of life, which has required stewardship, so that we can continue ours, which revels in waste. We must oppose the scapegoating of minorities in our society for what appears expediant for the majority. If the MacKenzie Valley is to be used in new ways, it must be the people of the Valley who determine the speed and nature of the new development. We must look for our own solutions to the problems which we have created. We must do it in a manner which protects the minorities in our society, not in a manner which exploits their political and economic weakness. Only by the majority accepting its responsibilities to the minorities can we have a society which begins to meet the imperative social justice.

We therefore submit that there should be no decision on the MacKenzie Valley pipeline or any other developments in the North until:

1) The Native Land Claims are settled, without financial or timing pressures placed on the Native negotiators.
2) The Native Peoples are assisted in setting up the political and economic structures, consistent with their cultural backgrounds, to help them make their own decisions about their own futures.

(20)

SUBMISSION OF

DEVELOPMENT EDUCATION RESOURCE SERVICES (D.E.R.S.)

TO THE

MACKENZIE VALLEY PIPELINE INQUIRY

JUNE 8, 1976

HALIFAX NOVA SCOTIA

We represent a small non-profit organization that produces popular material, does social animation and researches questions of development and underdevelopment in Atlantic Canada and globally. We have our origins in a group of regional offices of international development agencies (for example, Canadian Council for International Cooperation, Development and Peace, Oxfam and YMCA), although we are quite autonomous of these agencies at present.

Our experience in the international development field has brought home one overwheleming perception - that is, what we look at as underdevelopment in Third World countries is in fact an historically determined condition that has resulted in many instances from the extension of economic and political interests of Western European powers.

The reorganization of the globe into a system that makes the majority of the world's people peripheral but very much locked in, is now a clearly recognized reality. The evidence also suggests that underdevelopment is progressive within this system and can only be arrested by the complete transformation of this system.

With the very limited information we have on the north, peripheralization and marginalization has long since begun. The magnitude of the proposed Mackenzie Valley pipeline intensifies the penetration;it cannot possibly be a vehicle for the development and liberation of the Indian, Metis and Inuit of the North West Territories.

As we understand it, you are now in the fourth phase of your Inquiry, the social-economic phase. We would like to ask a very basic question - 'have the native peoples gained any more power over their world as a result of this Inquiry and what do you propose that will increase their power from here on in'?

We ask this question because we wonder if the basis of the Inquiry was the consideration of the present situation of the peoples of the North and how their lives were to advance. Had the enquiry begun with this premise, we doubt if there would be any ambiguity about the development of a pipeline at this time.

In our work we proceed with the premise that peoples everywhere can and will reconstruct the economic and social order according to their needs;we are confident that the human face will be seen in our systems, institutions and technology ;we are convinced that this reconstruction will be carried out by the people at the base who still have a popular culture. It is inconceivable that monoply capital or a centralized state apparatus can do this- since they are the very source of the alienation and underdevelopment in our present epoch.

Mr. Commissioner, as we understand it, the issue in the Yukon, Mackenzie Delta and Mackenzie Valley has its origins in the early contact and penetration of the peoples of America by European Commercial and political interests. What began as a trading arrangement with the Indian nations soon led to the underdevelopment of the peoples and nations of the hemisphere. In this, the native peoples of Canada have a similar historical experience to the peoples of Indochina, Namibia, Tanzania, China and the rest of the Third World.

Throughout this period the centres may have shifted from London to New York, Stockholm, Tokyo, and some of the peripheries have begun acting as sub-centres to other peripheries, for example, Rio de Janerio, or Kinshasa. But the world system has largely maintained itself. Traditional sectors cannot be viewed as separate from the modern sectors. The former have been reshaped to reproduce labour, and resources for the centres. So in Bombay, women from South India will earn 20 cents a day carrying cement for the construction of a luxury hotel, the ownership of which can be traced to ITT and the First National Bank. And the Ovambu people of Namibia will produce on contract labour for Falconbridge Nickel of Sudbury, Ontario.

In an excellently researched article for This Magazine, Susan Harlich demonstrates how the labour of Indians and Inuit contributed to the wealth of the Hudson's Bay Company - the same company that now operates, contrary to UN Sanctions, lucrative Karakul fur enterprises in Namibia, again with the use of contract labour. Wages for these workers are the lowest in the country, shelter and working conditions oppressive. Why do they work for the Bay? Quote:"As Africans are increasingly restricted to smaller and smaller areas - areas which are unable to sustain their present number, let alone a growing population, they are more and more forced to look elsewhere for some means of livlihood. It is this process which guarantees a steady supply of cheap labour for the white controlled economy, while an iron framework of passes, permits and regulations renders the work force powerless". Unquote.

We understand that you have already been presented with testimonies regarding

the operations of the multinationals in oppressing Third World conditions. We are making reference to them here to emphasize that the knowledge we have bears out the reasons why native peoples of the North want recognition of national rights before further negotiations are carried on.

The Chronicle Herald/Mail Star (a virtual monoply of the Denis family on daily news in Nova Scotia) have recently been publishing in bold PRINT with black border on the front page, editorials entitled "The Last Frontier", "A United Front", "Heritage in Trust", "The Fourth World". You might be forgiven with the morass of print you have to pour through, if you thought they were talking about the North. In fact, the Denis family are claiming the bed of the sea for Nova Scotia. The Last Frontier is a term that has been applied to the North - perhaps in one of the oil industry's advertisements. The Herald/Star group are referring to the continental shelf.

The term in both instances implies virgin territory and an a-historical view, as if there is no history of the North that goes back 20,000 years. In the Nova Scotia case the expression might seem warranted, but in the context of the editorials high flowing phrases and bombast, we are encouraged to believe that control of the sea bed will finally break our historical condition of underdevelopment. And we have had our share of technological panaceas in recent years - Fundy Tidal Power, Nuclear Plants, Heavy Water Plants and so on. None of these, nor even acquiring the resources of the sea-bed, suggests a transformation of the very system that generates underdevelopment.

Similarily, development in the Mackenzie Valley might sound credible if it was discussed in the context of a total restructering of our social economic life. At present, we suggest that Canadian society is so organized that it cannot have honest negotiations with the original peoples of this country, nor for that matter, the Third World peoples. The society in fact is organized not only to prevent the articulation of effective development strategies, but more importantly, blocks movement towards the self determination of peoples - clearly the number one issue in today's world. Without the rights and the resources to determine their own future, there can be no genuine negotiation. This then, is the fundamental challenge of the native peoples of this country. If you really want to negotiate you will have to remake the very basis of your society. Perhaps you yourself know this, but your Inquiry no doubt will be prevented from articulating it in all its depth.

In concluding this presentation, then we strongly support the native people of the North in their efforts to determine their own future.

PRESENTED TO THE BERGER COMMISSION ON THE MacKENZIE VALLEY PIPELINE

Paul F. Brodie,
6222 Jubilee Rd.,
Halifax, N.S.
June 8, 1976.

All too often environmental and social impact studies are carried out just slightly ahead of the bulldozer, if not sometimes behind it.

I am concerned that we are too eager to maintain a lifestyle that is squandering a non-renewable resource, in this case the fossil fuel reserves of the MacKenzie Delta and Beaufort Sea.

We would be far better off if we tightened our belts and emphasized energy conservation measures such as a national program of housing insulation, in particular the existing stock of older uninsulated homes. Through federal-provincial subsidies and complete income tax exemption of insulation costs we could very significantly reduce our energy requirements over the long-term. If the federal government were to further encourage mass transit in cities and in particular, improve the existing national railway system, which in the Maritimes is expensive and primitive, we would be well on our way to diminishing our energy demands.

The export of energy in any form from Canada must stop.

If we must tap additional oil reserves we should first exploit the Athabaskan tar sands where extraction costs are being matched by the increasing world market price. At least

this resource is further south where it can more easily be monitored and transportation is a lesser problem.

With respect to the resources of the original people of Canada, the Dene and Inuit, people in southern Canada present a paradox. One group feels they should be encouraged to utilize their natural renewable resource while the other opposes the trapping of fur bearing animals or the hunting of seals and whales. This is another problem which we in the south must resolve.

In conclusion, I would recommend that there be a moratorium of at least two years on construction of a pipeline and that we attempt to resolve the problems of who actually owns the land in question and why we have such a demand for a limited resource. After all, two years only means that the oil will remain in the ground an additional one millionth of one percent longer.

Paul Brodie

HALIFAX-DARTMOUTH COUNCIL OF CHURCHES

COALITION FOR DEVELOPMENT
6324 Cornwall St.,
Halifax, N.S.

June 8, 1976.

Mr. Justice Thomas R. Berger,
Commissioner,
MacKenzie Valley Pipeline Inquiry,
P.O. Box 1338,
Station B,
Ottawa, Ontario.

Dear Mr. Justice Berger:

Enclosed is our brief for your inquiry.

We thank you for providing all Canadians with an opportunity to express their concern about this very important issue.

Yours truly,

Patrick Kerans,
Chairperson

Submission of

COALITION FOR DEVELOPMENT

(Halifax-Dartmouth Council of Churches)

to

The Mackenzie Valley Pipeline Inquiry

As a group composed of church, community, and union organizations, we are concerned with the moral issues of social justice involved in the Mackenzie Valley. We know the oil companies are lobbying for the rapid construction of the pipeline, but we recognize a moral responsibility to guarantee that the interests of the native people are not ignored or underestimated because of these pressures. While we fully support reasonable development in the North, we cannot give tacit consent to the exploitation of whole races of people under the guise of "development".

It is important to distinguish between development and exploitation. Exploitation is simply the process of going into an area to extract resources to supply the "needs" of the intruders. When such extraction ignores the interest of the indigenous population of the region and displaces them as the potential users of the resources, then "resource extraction" becomes exploitation.

In fact, the traditional pattern of resource extraction in Canada, beginning with the Hudson's Bay Co. and continuing to the present, has not only removed the desired resources but has used the indigenous population as a source of cheap labour, broken the traditional social and economic relationships, and made the local people economically, and politically dependent on the outsiders (especially after the resource has been extracted and outside interest has been directed

somewhere else). It has left local people with a fractured cultural and social life and limited their ability to either restore their traditional lifestyle or to adapt to that imposed from the outside.

With a scale and a rate of development determined by the outside interests resource extraction imposes a boom and bust cycle on a region. The impact of this economic roller coaster is to create war-like disruptions with minimal short-run advantages and disastrous long-run consequences.

Development, on the other hand, uses the resources of an area to improve the condition of local populations. Development is the process by which people improve their opportunities to participate in desirable economic, social, cultural, and political activities- i.e. - to support themselves, to improve their personal relationships in their various communities (however narrowly or broadly defined), to increase their opportunities for creative expression (including recreation), and to make the decisions which affect their own lives.

We are concerned that the Mackenzie Valley is to be exploited, not developed. The establishment of this Inquiry was taken as a hopeful sign that the mistakes of the past would not be repeated, that the needs of the people directly affected would not only be considered but be given priority, that Canada's Native People would be dealt with in a manner which was compassionate and just. Now this hopeful sign appears to be a charade, because of the attitude of the oil companies and Federal government toward the Inquiry.

The Government has refused to guarantee that the construction of the Mackenzie Valley Pipeline will not begin until after this Inquiry submits its report. Such a position can only be seen as evidence that

this Inquiry is a cynical manipulation of all the people of Canada. Our government seems willing to make a monumental decision without understanding all the implications of that decision. To allow construction before this Inquiry reports would be an irresponsible act, both in terms of making a decision with insufficient information, and also by pretending to want to hear the concerns of those most directly involved, then admitting they might not wait to listen.

We condemn our government's attitude as cruel, blind, and hypocritical. The Canadian people should be aware of this hypocrisy.

The government must cease to be an agent for exploitation. An official of the Department of Indian Affairs and Northern Development (DIAND) has been quoted as saying that this Inquiry is "just window dressing". The Minister of DIAND, Judd Buchanan, was recently quoted as saying that his job "is to make life easy for the oil companies". We repudiate such attitudes and urge all Canadians to express their alarm that the very people charged with protecting the interests of the native peoples should be so callous about those same interests.

We recognize that many people of Southern Canada share these attitudes which alarm us. We tend to see "progress" in things which can be measured-profits, growth rates, GNP, jobs. Quality of life is hard to measure and improvements in it are often long in coming and difficult to assess. It is easy for us to be more sympathetic to the crude economics of the issue rather than to the subtleties of effective development. Even in dealing with the quantifiable, we become fascinated with the grand scale of things and ignore some of the important detail. It is the thousands of jobs created by the construction that we see, not how many of those jobs will actually be held by Native people. It is the

billions of dollars of expenditure that attracts, not the impact of huge construction teams on tiny native communities. We see the environmental impact of construction from the view point of the south, not the ecology of the north.

Part of our problem in the south is that we fail to see the importance of land to the Native Peoples. To us, the North is a wasteland, cold, barren, inhospitable to the point of being inhabitable. We do not realize that the delicate ecology requires thousands of square miles of land to support relatively tiny human settlements.

The people of the North require the land not only for economic survival but for cultural survival; their whole society depends on the use of the land. We fail to see that changing the use of the land means asking people to give up their traditional lifestyles and cultures, without any guarantee of an alternative lifestyle or even a smooth transition to an alternative lifestyle. We see the land claims issue as simply how much money will be paid, not an effort to guarantee that the people who have lived off the land for thousands of years should be the ones who determine how it will be used and at what speed change will take place.

It must also be admitted that many in the South see the Native Peoples' claims as standing in the way of our own needs. We have been convinced by the oil companies that our lifestyle cannot be maintained unless we have the northern energy and have it quickly. We feel we "need" the energy sources and that the needs of 22 million southern Canadians and of our U.S. customers are more pressing than the "rights" of some thousands of native peoples who appear to be clinging to a lifestyle which is not only alien to us, but appears inferior. Thus our own "need" is obvious and the objectives of the native people both vague and dubious.

We fail to question our own lifestyle which is very wasteful of energy, we accept the statistics of the oil companies, even though they have changed their predictions drastically in the last 3 years (a change which should make us question their competence or honesty). We do not question the continuing export of cheap southern oil, nor do we question the disinterest in finding alternate sources of energy which could be less expensive and certainly less damaging and disruptive.

Southern Canadians must recognize that we are not playing a numbers game of how many southerners "need" the energy vs. how many northerners will be affected by the pipeline. This is a moral issue which challenges us to consider the implications of putting our self-interest ahead of the interests of the Native Peoples. These people have managed to survive in a climate that most of us can only imagine. Are we going to tell them that they cannot determine their own future or that our convenience is more important than what may be their very survival?

The members of Coalition for Development support the concerns of the Northern Canadians who want to be able to determine their own future. We feel it is our responsibility as individuals and as represented by our Federal Government to guarantee that Northern Development is precisely that, and not one more chapter of exploitation, many of which have been written in the Maritimes.

We consider it immoral to impose major costs on one segment of our society without having determined if that cost is necessary for our own "needs", and in terms of the way that we go about the process. The government must deal in good faith with the people of the North and in this context it seems evident that the process should involve the following:

1. SETTLEMENT OF NATIVE LAND CLAIMS as a pre-requisite to any further intrusions into Native areas. This is vital if any form of self-determination is to be meaningful. The recent decision of the federal cabinet to allow exploration drilling in the Beaufort Sea over the protest of Native People is a clear indication of the difference between the government's interpretation of the interests of the North and the interpretation of people affected. Self-determination will only be meaningful when the Land Claims are recognized by the courts, for only then will decisions be made by the northern people, on the basis of criteria which they consider important. The situation in James Bay also highlights the importance of prior settlement of Land Claims as, in that case, despite the court's recognition of the legitimacy of the Claims, construction was permitted to proceed on the basis of economic expediency--that too much money had already been spent. Thus the James Bay people were forced to negotiate a settlement in the face of a fait accompli and their position was weakened accordingly.

2. THE ESTABLISHMENT OF THE ECONOMIC AND POLITICAL STRUCTURES FOR NATIVE SELF DETERMINATION before any further intrusions occur. This is necessary so that the Natives can properly determine their own future. This will obviously take time for people to consider options and make choices and it is important that they do this in their own style. We should not impose either our structures or thinking on them but allow them to develop those which are consistent with their own way of thinking. It is essential that they be given time to do their own research, both into their land claims position and their options for the use of their resources. In this context, the Native People must be given not only time but financial resources to build their case, and the current deadlines being imposed by the Federal Government are not only unreasonable, but further indication of the Government's lack of good faith in dealing with the Land Claims issue.

In summary, we are saying that it is up to the people of Southern Canada to solve our energy problem without creating new problems for the people of the North. It is our responsibility to see that the North is developed in a way and at a pace which benefits the people of the North.

Halifax-Citadel New Democratic Party

News Release

The Halifax-Citadel N.D.P. today opposed the construction of the MacKenzie Valley Pipeline. Their brief to the Berger Inquiry warned that the pipeline would cause significant damage to the Native People of the North and to the economy of Southern Canada.

According to Michael Bradfield, the massive scale of the project will distort the economy in a number of ways.

"Resources will be bid away from other uses. That will cause prices to rise and will hurt our export industries. It will also mean fewer resources available to meet other needs, such as housing and investment in plant and machinery."

Exports will also be hurt because of a rising exchange rate. "Foreign companies want to control the pipeline. That means foreign funds entering Canada to finance it," says Dr. Bradfield, a Dalhousie economist. "This will drive up our exhange rate by as much as 25 percent. Since this makes our exports more expensive, our export sales will decline and people in these industries unemployed."

The N.D.P. brief warns that the Atlantic Provinces will be hard hit by rising exchange rates. The region is highly dependent on exports for jobs and will get very few jobs from the construction of the pipeline.

Dr. Bradfield points out that the damage is not inevitable. "With Canadian control and financing and a slow rate of construction, we can avoid much of the damage to the North and South. However, until we have explored other sources of energy and implemented intelligent conservation policies, we should not be taking the risks involved in the pipeline."

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For more information, contact Michael Bradfield, 424-2448

The Halifax-Citadel N.D.P. is appalled that the federal government has repeated that it may not wait for the Berger Inquiry's final report before making a decision on the pipeline. Such a position is irrational: the government is willing to make a decision without knowing if it is a good decision. Such a position is irresponsible: the government is not listening to those most affected. It implies a return to the traditional assessment, considering only the financial "facts" presented by the profit makers and ignoring the intangible but major social implications of the decision. Canadians should have no confidence in a government which would make such a significant decision in haste.

Waiting for the Berger Inquiry to report is necessary if the decision is to be democratic. A basic principle of democracy is that the people affected by the decisions of government have an opportunity to consider the implications of the decision and to react. The Native Peoples will bear the bulk of the social costs of the pipeline. It is therefore crucial that they be heard and that their concerns be given high priority in the decision-making process.

Governments in Canada, both federal and provincial, have consistently neglected the concerns of the Native People of Canada. Governments have treated the Native People paternalistically, forcing white man's priorities on them, often with disasterous results. The recent decision to permit exploration in the Beaufort Sea despite the protest of Native groups indicates that the situation has not changed.

New mechanisms must be established to give Native People self determination. An obvious one would be to settle the land claims of the Native People so that their legal rights would be clearly established, as would their ability to influence their own futures. This would be

consistent with our concepts of democracy and justice. If these concepts are to have meaning for all Canadians, it is important that no more development take place in the disputed areas until the land claims have been decided, within a timetable acceptable to the Native People.

We recognize that the Federal Government makes decisions for all the people, not just segments. It must therefore weigh the interests of Canadians in the South, as well as the North. To treat Native peoples in a just and democratic manner may impose delays affecting the rest of Canada. However, the immediate start of this mammoth project may also have harmful effects on Southern Canada. The implications of either delay or immediate go-ahead are not fully understood in the South. Certainly, the Federal Government cannot claim to have an election mandate for one decision or the other.

We would like to speak to the economic effects on the South that the pipeline may have. We say "may" because these effects are not necessary; they will only happen if the speed of construction of the pipeline and its financing are handled in particular ways. If handled in other ways, the economic damage can be avoided, or at least diminished.

The economic implications were raised by Eric Kierans when he resigned from the federal cabinet. He warned that the massive scale of the project could create major distortions in the Canadian economy because of its inflationary impact and because of the effect on exchange rates from the inflow of foreign financing. The point which Kierans did not make is that these effects are not inevitable.

The massive dollar cost of the pipeline simply represents the huge volume of resources--men, material and equipment--which must be diverted to the construction of the pipeline. This diversion requires that these

resources be bid away from their other uses, which means increasing their prices. The pipeline construction will drive up the prices of other goods and services which society needs. Fewer of these goods and services will be produced as resources are shifted to building the pipeline. Thus our housing, investment, and other needs will suffer while the pipeline is under construction. When the construction is finished, resources must be shifted back to previous uses or to new ones, or else face unemployment.

The inflationary impact of the pipeline will affect our ability to export. The cost of Canadian goods will be rising faster than the cost of those of our international competitors. Our export industries will suffer and those people laid off in these industries will be unemployed, at least until they are able to fit into jobs created in the sectors of the economy which are booming because of the pipeline.

Our export position could be more seriously affected, even for industries which do not experience rising costs in order to keep resources. This is because of the likely exchange rate effects of the financing of the pipeline. This may involve an annual inflow of hundreds of millions of dollars of foreign currency into Canada. This foreign currency will be exchanged for the Canadian currency to buy the Canadian resources for construction. This demand for Canadian currency will drive up the value of the Canadian dollar in terms of other currencies and make our exports more expensive for foreigners. Thus, all exporting industries will find their competitive position damaged and their foreign sales slumping.

The effect of rising exchange rates will be especially severe on Nova Scotia and the Atlantic provinces generally. Since we require a great amount of imports to meet our needs, we must export to pay for the imports. If our exports decline drastically, we will be unable to

finance our imports, except by further foreign borrowing which will cause a future drain on our foreign exchange earnings as we pay off principal and interest. (Paradoxically, such borrowing helps to keep up the exchange rate, the source of the difficulty in the first place.) Thus the rising exchange rate caused by foreign borrowing will cause major unemployment and financing problems in Nova Scotia because of the impact on our exports.

The foreign financing may also add to the inflationary pressures in Canada. If the foreign exchange is purchased by the Bank of Canada issuing new money, this will cause an increase in the money supply which will add to the inflation beyond the demands imposed by the shifting of resources for the pipeline. The new money in the system will become the base for further expansion of loans by the banks so that the final increase in demand will exceed the initial pipeline-related increase.

The Bank of Canada can avoid this inflationary expansion of the money supply by financing the purchase of foreign exchange out of tax revenue from the government, or by selling government bonds to Canadians. In both cases, the funding comes from Canadians and Canadians are faced with additional sacrifices--loss of purchasing power or sky-rocketing interest rates. Thus, "foreign investment" to buy Canadian resources means that Canadians ultimately, one way or another, will finance the project.

The foreign investment could be financed privately, without exchange rate pressures. This would be the case if the foreign companies obtained the money by borrowing it in Canada. This is a long-standing practice in Canada. Foreign multinationals often borrow from Canadian banks to buy Canadian resources or companies. What appears to be foreign investment, and is in terms of who controls the profits, is really a Canadian

investment in terms of who makes the savings available for the investment. Thus, this method would end up with foreign control, Canadian savings, and higher interest rates in Canada.

What the above scenarios demonstrate is that the use of Canadian resources to build the pipeline implies the use of Canadian money, and hence, Canadian financing. If it is Canadian resources and financing for the pipeline, we do not need "foreign investment." To have it simply means that someone outside the country controls the direction of the investment and reaps the profits but Canadians still make the sacrifices. This is hardly in the interest of Canadians. However, current foreign investment policy gives us absolutely no confidence that the Federal Government is working in the interest of Canadians.

The pipelines, <u>if constructed</u>, may require some foreign investment. However, foreign investment is not only unnecessary, but harmful, if it finances the Canadian resources which go into the pipeline. To the extent that foreign resources are used for the pipeline, and if we do not have the foreign exchange reserves or current earnings to finance the foreign resources, then foreign investment will be necessary. This means that we need foreign currency because we need foreign inputs. If we rely on foreign finance only for the foreign component, there is no upward pressure on our exchange rate and the inflationary pressure of shifting resources is borne outside Canada. Of course, the jobs provided are also outside Canada.

The conclusion, then, is "foreign investment if necessary, but not necessarily foreign investment." By having the proper amount of foreign investment, the country can avoid exchange rate problems. By increasing the amount of foreign goods used in construction, the government can decrease the amount of disruption and inflation imposed on the domestic

economy. Of course, this poses several long-run foreign currency and other problems related to foreign investment.

The inflationary impact of the pipeline would be diminished if it were constructed slowly. The additional demand in any year would be lower, the resources diverted reduced accordingly, and the adjustment processes less severe. It would allow more time to handle the environmental and social difficulties in the North. Thus, a slower rate of construction would reduce the disadvantages for both the South and the North.

It is obvious that the decision of whether to proceed with the pipeline and how to proceed with it requires a lot of information and planning to minimize the costs and to achieve the highest net benefit. In the interest of rationality and justice, further developments in the North should be stopped until the Berger Inquiry is well debated, in parliament and by the public, and until the Native land claims are settled.

Given the major social, economic, and environmental dangers of the MacKenzie Valley pipeline, we feel that the project should be abandoned. We do not have confidence in the ability of the Federal Government to deal with the oil companies. Their involvement in Syncrude and their taxation policies for the oil industry justify our skepticism. We do not have confidence in the ability of the Federal Government to deal justly with the problems created for Native People. The whole history of the Department of Northern Development and the Government's attitude toward the Berger Inquiry justifies this conclusion. We do not have confidence in the Government's ability to handle the economic implications of the pipeline. Their admission that Wage Controls were introduced for

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APPENDICES

Appendix I: Map: The Royal Proclamation of 1763

Appendix II: Aboriginal Title, (National Indian Brotherhood)

Appendix III: Map: The Inuit Lands

A Personal Note by the Author of the Brief

I am currently a third year law student at Dalhousie Law School. Previously, I was a member of the Royal Canadian Mounted Police and was stationed in Inuvik and Yellowknife where I worked for three years. This gave me an opportunity to visit most of the communities in the western N.W.T., and also to see the problems faced by the northern natives in the ever increasing clash of cultures. After leaving in 1970, I maintained an active interest in the North and, while pursuing a B.A. degree, I did a considerable amount of research into the problems of Canada's native peoples.

These experiences and my research have led me to the conclusion that, for cultural, moral and legal reasons, it is imperative that the land claims of the native people be settled fairly and equitably. In the underdeveloped portions of the North, this is essential to afford protection from the intrusions of the developmental steamroller. In the more developed areas it is necessary to rectify, at least partially, the problems already created.

THE LEGAL BASIS OF THE ABORIGINAL LAND RIGHTS OF THE NORTHWEST TERRITORIES INUIT

1. Introduction

The primary purpose of this submission is to establish that the Inuit of the Northwest Territories have enforceable rights in the land in that portion of the Northwest Territories that has been their traditional homeland. In doing so, the nature of that right is not examined in depth but is only discussed as a necessarily incidental part of the general discussion.[1] While the Indian claims are not specifically discussed, it will become apparent that many of the arguments in favour of Inuit claims apply mutatis mutandis to those of the N.W.T. Indians.

In establishing this right, support is drawn from the recognition of aboriginal rights in various parts of the "New World" as well as other areas of Canada and the recognition of the need to extinguish those rights.[2] The submission

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1. This approach is taken because it seems that the best legal strategy to enforce a claim is in an action requesting a declaration, injunction or the filing of a caveat, none of which require specific definition of the nature of the interest alleged but need only establish that some interest exists.

   The value of this approach is evidenced by the two recent leading cases in the field Calder et al v. Attorney General of British Columbia, (1970) 8 D.L.R. (3d) 59, 71 W.W.R. 81, (B.C. Prov. Ct.); affd: 13 D.L.R. (3d) 64, 74 W.W.R. 481 (B.C. C.A.); affd: (1973) 34 D.L.R. (3d) 145 (S.C.C.) herinafter referred to as "Calder", all future page references are to 34 D.L.R.; and Re Paulette et al and Registrar of Titles (No. 2), (1973) 42 D.L.R. (3d) 8 (N,W.T. S.C.), herinafter referred to as "Paulette".

2. As original source material for some of the documents cited is not available in Halifax (many are in various government archives) I have relied on some secondary material which has been properly cited.

then proceeds to show the applicability of the foregoing to the Inuit lands. A brief comment is made on the recent land claims proposal submitted to the government of Canada by the Inuit Tapirisat. Finally, the relevance of this material to the Mackenzie Valley Pipeline Inquiry is detailed.

As most of the evidence pointing to the existence of aboriginal rights in Canada is in reference to Indians it is necessary to indicate, as a preliminary matter, that historically the term "Indian" included the Inuit or Eskimo race. Through an historical analysis this was shown conclusively by the Supreme Court of Canada in Reference as to whether "Indians" in S. 91(24) of the B.N.A. Act includes Eskimo Inhabitants of the Province of Quebec.[3] Sissons, J., in R. v. Kogogolak[4] also affirmed this finding and extended its applicability beyond the reference in the B.N.A. Act. He stated, "In the early days the Eskimos were considered as a tribe or nation of Indians." Due to the strong historical evidence supplied in the Re Eskimos[5] case, and the fact that it was a unanimous judgment, there is little doubt that this point is now well settled.

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3. sub. nom: Re Eskimos, [1939] S.C.R. 104, [1939] 2 D.L.R. 417. Also, as tacit recognition of this fact Parliament found it necessary to expressly exempt the "race of people commonly referred to as 'Eskimos'" from the provisions of the Indian Act, R.S.C. 1970, c. I. 6, s. 4(1).

4. (1959), 13 C.R. 12, at p. 13, (N.W.T. Ct.); see also R. v. Koonangnak, (1963), 45 W.W.R. 282 at p. 302.

2. The Legal Concept of Aboriginal Rights and their Extinguishment in Locations Other Than Canada

(a) The Origins of the Concept

The concept of aboriginal rights gains considerable stature from the fact that many of the early legal philosophers recognized the existence of land rights in the people native to the lands which were then being colonized. The concept has been traced back as far as 1532 when it was espoused by a Spanish theologian, Francisco de Victoria. He was followed by others in England (1542), Germany (1548)[6] and the Vatican (1537).[7] Sir William Blackstone in his famous commentaries of 1765 stated as accepted law that only desserted land could be taken without cession or conquest. Dr. Lindley, a British international lawyer, in his book, The Acquisition and Government of Backward Territory in International Law, deals in detail with the foregoing history, identifies three different schools of thought but concludes that,

> Comparing these three schools of thought, we see that, extending over some three and a half centuries [he was writing in 1925], there had been a persistent preponderance

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6. See: M.F. Lindley, The Aquisition and Government of Backward Territory in International Law, (New York, Greenwood Pub. Co.: 1926), p. 12 ff.

7. See P.A. Cummings and N.H. Mickenburg, ed., Native Rights In Canada, 2nd ed., (Toronto, The Indian-Eskimo Assoc. of Canada: 1972), p. 14; herinafter cited as "Native Rights".

> of juristic opinion in favour of the proposition that lands in possession of any backward peoples who are politically organized ought not to be regarded as if they belonged to no one. 8

He went on to note that there had, though, been some recent (to 1925) departure from that position but it is apparent that he considers them contrary to established law.

(b) The Practice of Colonizing Natives Outside North America

Lindley also indicated that this concept was not a mere abstraction, for the Swedes , the Dutch, the Belgians, the Spanish, the Portugese, the Italians, the Germans, the French and especially, the British recognized some native claim to land of their respective colonies.[9] This was based on the principle that the natives became subjects of the Crown and accordingly maintained some rights included in which was the right to retain their land.[10]

The policy and practice of the British in areas other than North America demonstrates that nation's general acceptance of the land rights principle. In Southern Rhodesia (formerly Matabeleland and Mashonaland) a Land Commission

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8. Lindley, op. cit., fn. 6; at p. 20. His definition of political organization is extremely loose and would certainly encompass all of the Native people of North America (see p. 21 - 22).

9. Lindley, ibid., at pp. 338 - 350. See also Native Rights, op. cit., fn. 7; at pp. 14 - 22.

10. Essentially the real property principle that undisturbed possession is prima facie proof of ownership.

was established by the Matabele Order in Council of July 18, 1894 and it also provided that the British South Africa Company reimburse the native people for any land taken from them. This arrangement was detailed and approved by the Privy Council in a reference case entitled In Re Southern Rhodesia.[11]

New Zealand was annexed by Britain in 1840 and careful regard was paid to the land rights of the Maoris. The British representatives in New Zealand was instructed by the Minister to enter into fair contracts for the

> cession to the Crown of such waste lands as may be progressively taken for the occupation of settlers ... The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. 12

Furthermore, the Treaty of Watangi of 1840 confirmed the right of natives to "full, exclusive, and undisturbed possession of their lands" subject only to the Crown's "exclusive right of pre-emption" at a mutually agreeable price."[13]

This policy also received firm and clear judicial confirmation in an early case on Native land claims. In The Queen v. Symonds,[14] Chapman, J., of the New Zealand Supreme Court stated,

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11. [1919] A.C. 211.

12. As quoted in Lindley, op. cit., fn. 6; at p. 344 - 345, emphasis added.

13. Ibid., at p. 345.

14. [1847] N.Z.P.C.C. 387, (N.Z.S.C.).

> The practice of extinguishing Native title by fair purchase is certainly more than two centuries old. [15] It has long been adopted by the Government in our American colonies [referring to pre-confederation Canadian colonies], and by that of the United States. It is now part of the law of the land. [16] [and at p. 390] Whatever may be the opinion of jurists as to the strength or weakness of the native title, it cannot be too solemnly asserted that it is entitled to be respected, that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the native occupiers.

Chapman, J., goes on to affirm that extinguishment can be done only in compliance with the provisions of the statutes. It is worthy to note that these statements are not restricted to New Zealand but are expressions of the British common law and were affirmed by the Privy Council.[17]

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15. This would date British policy to sometime before 1647. Note that Lindley suggests consistent legal thought along these lines since about 1575 (see the quote at my fn. 8)

16. Op. cit., fn. 14; at p. 390. This portion of the case was affirmed by the Privy Council in Nireaha Tamaki v. Baker, [1901] A.C. 561, at p. 580 where their order was as follows:

> That it not appearing that the estate and interest of the Crown in the subject-matter of this suit, subject to such native titles (if any) as have not been extinguished in accordance with law, are being attacked by this proceeding, the Court has jurisdiction to inquire whether as a matter of fact the land in dispute has been ceded by the native owners to the Crown in accordance with the law.

17. The latter statement was specifically quoted with approval in the Tamaki case, Ibid., at p. 579.

The rights of the native people of Fiji, Papua- New Guinea,[18] and Bechuanaland[19] were also handled in a similar fashion.

The situation in Nigeria was fully explored by the Privy Council in Amodu Tijani v, The Secretary, Southern Nigeria[20] a case which also makes some observations on Britain's general policy in the land rights area. In that case Tijani, a tribal chief, claimed expropriation compensation on the basis of ownership of the land while the competant authority offered compensation only on the basis of having "a right of control and management." The Nigerian courts upheld the latter but were reversed by the Privy Council. In giving the unanimous reasons of the court, Viscount Haldane noted that it was necessary to exercise caution in applying the English title concepts of "property" and "possession" and that

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18. For a description of the Papua-New Guinea situation see: J. Hartigan, "Papua-New Guinea Experience" in Aboriginies, Human Rights And The Law, ed. G. Nettheim, (Sydney: Australia and New Zealand Book Company, 1974.

19. Lindley, op. cit. fn. 6, at p. 36 - 37.

20. [1921] 2 A.C. 399.

> As a rule, in the various systems of native jurisprudence throughout the Empire, there is no such full division between property and possession as English lawyers are familiar with. A very usual form of native title is that of a usufructory right, which is a mere qualification of or burden on the radical or final title of the Sovereign where that exists. In such cases the title of the Sovereign is a pure legal estate, to which beneficial rights may or may not be attached. But this estate is qualified by a right of beneficial user which may not assume definite forms analogous to estates, or may, where it has assumed these, have derived them from the intrusion of the mere analogy of English jurisprudence. Their Lordships have elsewhere explained principles of this kind in connection with the Indian title to reserve lands in Canada.[21] But the Indian title in Canada affords by no means the only illustration of the necessity of getting rid of the assumption that ownership of land naturally breaks itself up into estates, conceived as creatures of inherent legal principle. Even where an estate in fee is definitely recognized as the most comprehensive estate in land which the law recognizes, it does not follow that outside England it admits of being broken up .... The title, such as it is, may not be that of the individual, as in this country it nearly always is ..., but may be that of a community. Such a community may have the possessory title to the common enjoyment of a usufruct, with customs under which its individual members are admitted to enjoyment ... Abstract principles fashioned a priori are of but little assistance, and are as often as not misleading.[22] [emphasis added]

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21. Their Lordships here cite St. Catherine's Milling & Lumber Co. v. The Queen (1889), 14 A.C. 46 and Attorney General of Quebec v. Attorney General of Ontario, [1919] A.C. 214.

22. Tijani, op. cit., fn. 20; at p. 403 - 404.

In this case, the island of Lagos was the area in question and it had been colonized by the British in the 1850's. In 1861 a treaty of cession for the island was signed by the native king "with all rights, profits, territories and appurtenances thereto belonging"[23] Yet in interpreting this treaty and the vesting of land rights Lord Haldane stated,

> No doubt there was a cession to the British Crown, along with the sovereignty, of the radical or ultimate title to the land, ... but this cession appears to have been made on the footing that the rights of property of the inhabitants were to be fully respected. This principle is a usual one under British policy and law when such occurences take place. The general words of the cession are construed as having related primarily to sovereign rights only .... and free from the usufructuory ... title in favour of his subjects. 24 [emphasis added]

The situation in Australia is less encouraging. In 1837 a Parliamentary (British) committee found that the Aboriginal tribes were so backward that they were incapable of holding any title to land.[25] This view was recently substantiated by the Supreme Court of Australia's Nothern Territory in the case of Milirrpum et. al. v. Nabalco Pty.

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23. Ibid., at p. 406.

24. Ibid., at p. 407. See also A.G. of Southern Nigeria v. Holt, [1915] A.C. 599, (P.C.) and Oduntan Onisiwo v. A.G. Southern Nigeria, 2 Nig. L.R. 77, (Nig. S.C.) for similar opinions, the decision in Onisiwo was specifically approved by the Privy Council in the Tijani case.

25. Lindley, op. cit., fn 6; at p. 41. Lindley is also cited on this point in Native Rights, op. cit., fn 7, at p. 21.

Ltd. And The Commonwealth of Australia.[26] In arriving at his decision, Blackburn, J., considers the primitive nature of organization of Aboriginal tribes. He concludes his lengthy judgement by asserting that a doctrine of "communal native title" was never a part of the Common Law and could only be established by legislation. Furthermore, if any title had existed it could be extinguished implicitly by the legislature and did not require specific legislation. It has, however, already been noted that the Privy Council in the Tijani case and the New Zealand Supreme Court in Symonds case held precisely the contrary.[27]

This decision has also been severly criticized by G. Lester and G. Parker[28] who contend that the Aboriginies were not as disorganized as suggested, that the Common Law did recognize aboriginal rights and that cession could occur only by specific declarations or with the consent of the Aboriginies.

It is noted that in examining Canadian cases Blackburn, J., places much reliance on the British Columbia Court of Appeal decision in Calder et. al. v. A.G. of British Columbia.[29]

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26. (1971), 17 F.L.R. 141.

27. See discussion, supra, at fn. 14, 22, and 24.

28. G. Lester and G. Parker, Land Rights: The Australian Aboriginies Have Lost A Legal Battle, But..., (1973), 11 Alta. L.R. 189.

29. (1969) 8 D.L.R. (3d) 59.

He concludes his examination of that case with the following,

> I consider, with respect, that Calder's case, though it is not binding on this Court, is weighty authority for these propositions:
>
> 1. In a settled colony there is no principle of communal native title except such as can be shown by prerogative or legislative act, or a course of dealing.
>
> 2. In a settled colony a legislative policy of treating the land of the colony as open to grant by the Crown, together with the establishment of native reserves, operates as an extinguishment of aboriginal title, if that ever existed. 30

Since that time, however, the Calder case has been appealed to the Supreme Court of Canada[31] where, as is noted below, the validity of the Court of Appeal's judgement was left in serious doubt by a court evenly divided on the merits of the case.

While many of the foregoing examples may be distinguished from the Canadian situation due to different historical patterns, one thing is abundantly clear - that Britain especially, and many of the other colonizing nations, consistently recognized both in policy and practice, the land rights of native people. Furthermore, where these rights had not been extinguished through explicit declarations or mutually agreed upon settlements, the various courts were prepared to uphold them.

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30. Millirrpun, op. cit., fn 26; at p. 223.

31. (1973), 34 D.L.R. (3d) 145; [1973] S.C.R. 313.

(c) The Practice in the United States

As pointed out by N. H. Mickenburg,[32] aboriginal rights in Canada and the United States have common historical roots in the British policy of respect accorded native lands. As a result the development of the concept has proceeded in a similar fashion in both countries. American judicial decisions often refer to the Royal Proclamation of 1763 [33] and Canadian cases often refer to American decisions. This shared heritage gives American law in this area greater persuasive value than it normally enjoys in Canada.

The early history of practice and legislation in regards to native land rights in the United States was adequately summarized by the United States Supreme Court in Mitchell et al v. The United States.[34] The court said,

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32. N.H. Mickenburg, Aboriginal Rights In Canada And The United States, (1971), 9 Osgoode H.L.J. 119. Note: Much of Mickenburg's discussion of the American law in this article (pp. 121 - 123) is taken verbatum from pp. 16 - 19 of Native Rights, (op. cit., fn 7), of which he is a co-editor.

33. R.S.C. 1970, Appendix Volume, p. 123.

34. (1835), 34 U.S. (9 Peters) 711 at pp. 745 - 746. See also Native Rights, (op. cit., fn 7) at p. 15 - 20 and Lindley, (op. cit., fn 6) at pp. 338 - 339 for quotes from Massachusatts and Virginia Statutes dated 1633 and 1656 which recognize native land rights. Native Rights at p. 15 also refers to a 1629 letter which instructs settlers "to purchase their [the native's] title."

> One uniform rule seems to have prevailed from their first settlement, as appears by their [the colonies'] laws; that friendly Indians were protected in the possession of the lands they occupied, and were considered as owning them by a perpetual right of possession in the tribe or nation inhabiting them ...
>
> Subject to this right of possession, the ultimate fee was in the crown [sic] and its grantees, which could be granted by the crown or colonial legislatures while the land remained in possession of the Indians, <u>though possession could not be taken without their consent</u> ....
>
> Indian possession or occupation was considered with reference to their habits and modes of life; their hunting grounds were as much in their actual possession as the cleared fields of the whites; and their rights to its exclusive enjoyment in their own way and for their own purposes was as much respected, until they abandoned them, made a cession to the government, or an authorized sale to individuals .... Such was the tenure of Indian land laws of Massachusettes; in Connecticut; Rhode Island; New Hampshire; New York; New Jersey; Pennsylvania; Maryland; Virginia; North Carolina; South Carolina; Georgia; by congress; by their respective laws, and the decision of courts in their construction .... <u>Their rights of occupancy is considered as sacred as the fee simple of the whites</u>. 35 [emphasis added]

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35. Note the similarity of the last sentence to those in <u>Tijani</u>, (<u>op. cit.</u>, fn. 20) as quoted at my fn. 24. That statement is also confirmatory of almost identical statements in other U.S. cases. In The <u>Cherokee Nation v. Georgia</u>, (1831) 30 U.S. (5 Peters) 1 at p. 48, Marshall, C.J., giving the majority view holds that the rights of possession continues until properly extinguished. It is noteworthy that Thompson, J., who dissented went further, he held that the Cherokees were actually a foreign state who entered into mutually binding treaties with the U.S. but retained their land "title". <u>Note</u>: A similar list of states appears in a Supreme Court of Canada case: <u>St. Catherine's Milling & Lumber v. The Queen</u>, (1886), 13 S.C.R. 577, at p. 584; affd.: (1889) 14 A.C. 46.

Chief Justice Marshall of the United States Supreme Court in a series of decisions enunciated the legal position of the American Indians.[36] The two leading decisions were written by him and are Johnson v. M'Intosh[37] and Worcester v. Georgia.[38] They clearly state that discovery gave sovereignty over the land, good against all other European nations but still subject to the Indians right to possession — a right which could only be extinguished by conquest and cession or by purchase. The Royal Proclamation is treated as declaratory of the law, indicating that the foregoing applies to all areas but also placing restrictions on alienation in that the land could only be sold to the Crown or with the approval of the Crown. This was discerned as the British colonial practice and policy and it was held to be applicable in the United States.[39]

Furthermore, the United States Supreme Court has held that this right is enforceable without any specific legislative or executive pronouncement as to its existence. Thus

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36. He concurred in the Mitchell case (op. cit., fn. 34) and wrote the majority decision in the Cherakee Nation case, (op. cit., fn. 35).

37. (1823) 21 U.S. (8 Wheat.) 543. The spelling "M'Intosh" is used in the report although Native Rights, (op. cit., fn. 7), and Mickenburg in his article (op. cit., fn. 32), spell it "McIntosh".

38. (1832) 31 U.S. (6 Peters) 515. (Note: In this case and the previous one, the pagination used by Mickenburg does not correspond to our collection of U.S. Reports.)

39. The four decisions mentioned in this section contain numerous references to other similar American cases.

in the United States v. Santa Fe. Pacific R. Co.:[40]

> Nor is it true ... that a tribal claim to any particular lands must be based upon a treaty, statute or other formal government action. As stated in the Cramer case,[41] 'The fact that such right of occupancy finds no recognition in any statute or other formal government action is not conclusive.' [42]

The United States authorities have since passed a statute, the Indian Claims Commission Act (1946)[43] which sets up a tribunal to settle claims. Section 70 allows claims for unrecognized aboriginal titles.[44]

It was out of this history that the Alaska Native Claims Settlement Act[45] of 1971 grew.[46] Historically the United States has clearly recognized certainly a moral and in all

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40. (1941), 314 U.S. 339, at p. 347.

41. Cramer et. al. v. United States, (1923), 261 U.S. 219, (U.S.S.C.), at p. 229.

42. But see the discussions of Tee-Hit Ton Indians v. United States, (1955), 350 U.S. 848, (U.S.S.C.); in K. Lysyk, Approaches to Settlements of Indian Title Claims: The Alaska Model, (1973), 8 U.B.C. L.R. 321, at p. 326 - 328 and Native Rights, op. cit., fn. 7; at p. 45 - 47. Due to this ruling there is some disagreement over the need for statutory recognition but it seems clear that it can be narrowly constructed, especially in view of the earlier law.

43. 25 U.S.C.

44. The proposition put forth in Native Rights is that the Tee-Hit Ton court in essence held that this statute superceded the common law right.

45. 85 Stat. 688.

46. See K. Lysyk, op. cit., fn. 42; for an excellent analysis of the settlement and its development.

likelihood a legal common law[47] aboriginal right - a right which must be extinguished before the land is taken over, such extinguishment to be accomplished by conquest, purchase, or, and this is still quite doubtful, by unilatural government declarations.

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47. The Tee-Hit Ton case throws the only real doubt on legal position.

3. The Existence of Aboriginal Rights in Canada

(a) The Proclamation of 1763 and Judicial Recognition of Aboriginal Rights.

As has been previously noted, from the earliest dates of colonization, British policy in both North America and in the rest of her empire, was to recognize the land rights of the native peoples. Documents indicative of this policy date back to 1629 and North American colonial statutes to 1633.[48] As early as 1693 a treaty involving part of the Maritime Provinces was signed.[49] The Royal Proclamation of 1763[50] is, however, in the words of K. Lysyk, "the usual point of commencement for a discussion of Indian title,"[51]

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48. See discussion, supra, at pp. 12-13.

49. Reprinted in Native Rights at p. 295.

50. R.S.C., 1970, Appendices Vol., p. 123. Note: The proclamation still has the force of law in Canada as far as Indian rights are concerned: Campbell v. Hall, (1774) 1 Cowp. 204, 98 E.R. 1045; The King v. Lady McMaster, [1926] Ex. C.R. 68, at p. 75. It has also been referred to as the "Indian Bill of Rights": St. Catherine's Milling, (1889) 13 S.C.R. at pp. 577-652; affd. op. cit., fn. 21 and "Its force as a statute is analogous to the status of Magna Carta which has always been considered law throughout the Empire." Hall, J., in Calder, op. cit.

51. K. Lysyk, The Indian Title Question in Canada: An Appraisal in Light of Calder, (1973), 51 C.B.R. 450, at p. 453. Note: The reason for this appears to be the fact that until the Treaty of Utrecht, 1713, France controlled all of Canada (except Hudson Bay Company lands and Newfoundland--which was disputed). The Treaty of Paris signed on Feb. 10, 1763, ended French control in Canada, and led to the need for a uniform policy of government which, together with the establishment of new colonial boundries, was embodied in the Royal Proclamation of October 7, 1763. See Kerr, A Historical Atlas, pp. 12, 22, 30, and 31, and W. L. Morton, The Kingdom of Canada, 2nd ed., (Toronto: McClelland & Stewart, (1969), pp. 91 - 162.

- which, in light of the discussion which follows, may be an unfortunate fact.

The portion of the Proclamation addressing the native land question begins with the words:

> And wheras it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Tribes of Indians with whom We are connected , and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominion and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds. 52

The Proclamation then instructs the colonial governors not to grant to anyone any land beyond the boundaries of their colonies,[53] or any land "lying Westward of the Sources of the Rivers which fall into the Sea from the West and Northwest" and all land not within the limits of the colonies and the Hudson Bay Company territory. The quoted portion above, is usually interpreted as meaning the land west of the Alleghany Mountains.[54] This is then followed by a general provision prohibiting the settlement of

> Any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians.

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52. R.S.C., op. cit., p. 127

53. See map attached as App. I.

54. Ibid.

These land rights could only be extinguished by the Crown in the manner specified in the Proclamation.

The Proclamation has raised two major areas of doubt. One is the geographic extent of its applicability and the other, whether it is declaratory of British law and therefore merely affirming native rights in land, or if it is the sole source of native rights. On the first question — one should note that it only becomes relevant if the second question is answered in a manner which would hold the Proclamation to be the sole source of "Native title". If the Proclamation is declaratory of the common law, geographic limitations are irrelevant for the same policies will be adopted by the courts.

It would appear from a reading of the Proclamation, the historical precedents,[55] and the correspondence and documents immediatly preceding its issuance;[56] that the intent of the Proclamation was to "reserve" for the Indians[57] all lands under British control which were not specifically enumerated

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55. See discussion, infra, at pp. 23-24.

56. See Native Rights, pp. 24 - 30. See also R. v. Wesley, (1932), 58 C.C.C. 269 (Alta S.C.A.D.), at p. 278, where article 40 of the Articles of Capitulation, (Montreal, 1760) is quoted: "The savages shall be maintained in the lands they inhabit ..."

57. Includes "Eskimos"; see discussion, infra.

in the Proclamation. This view has been taken by the courts on several occassions. Morrow, J. in Re Paulette and Registrar of Titles (No. 2)[58] seized on the phrase "Lands and Territories lying to the Westward of the Sources of the Rivers," and held that this could encompass the western half of the Northwest Territories. In doing so, he was following Hall, J., of the Supreme Court of Canada who, in writing the dissent of an evenly split court in the Calder[59] case, held that the Proclamation even applied to the area west of the Rockies. He rejected (and Morrow again followed) the contention of the majority in Calder who followed dicta in R. v. Sikyea[60] holding that

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58. (1974), 42 D.L.R. (3d) 8, at pp. 24 -25. An interesting sidelight of this case is that, upon counsel for the Crown, (Federal) walking out of the hearing after an adverse ruling on a preliminary matter, Judge Morrow appointed an amicus curiae to represent their interests. At the end of the case he assessed costs against the Crown and also ordered that they pay the amicus curiae his councel fees.

59. Op. cit.

60. (1964), 43 D.L.R. (2d) 150; 46 W.W.R. 65, (N.W.T.C.A.); affd.: (1964), 50 D.L.R. (2d) 80; [1965] 2 C.C.C. 129; [1969] S.C.R. 642, (S.C.C.). The weight of this dicta is questionable for the judgement did not look into the historical evidence and clearly stated it to be irrelevant:

> That fact (the terra incognito theory) is not important because the Government of Canada has treated all Indians across Canada, including those living on lands claimed by the Hudson's Bay Company, as having an interest in the lands that required a treaty to affert its surrender.

The Supreme Court of Canada affirmed without comment on this issue.

the lands in question were considered to be terra incognito and therefore outside the ambit of the Proclamation. This contention was more than adequatly rebutted by Hall, J., who pointed to numerous historical examples which led him to conclude that

> it cannot be challenged that while the west coast lands were mostly unexplored as of 1763 they were certainly known to exist and that fact is born out by the wording of the paragraph in the Proclamation.[61]

Morrow, J., in R. v. Kogogolak[62] and R. v. Koonungnak[63] also took this line. Since the Calder case, a British Columbia Provincial Court in R. v. Dennis and Dennis[64] and a British Columbia County Court in R. v. Kruger[65] have recognized the "judicial stalemate" in the Supreme Court of Canada in Calder and specifically refused to follow the

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61. Calder, op. cit., at pp. 207 - 208. One may also note that this historical analysis done by Hall is even more applicable to the Inuit lands than it is to the Nishga lands. He mentions the search for the Northwest Passage (begining in 1576) and the travels of the Hudson Bay Company explorers west of the Hudson Bay. Hall, J., also dismissed the contrary finding in R. v. White and Bob (1964), 50 D.L.R. (2d) 613, 52 W.W.R. 193; affd. 52 D.L.R. (2d) 481 n.; [1965] S.C.R.V1 as being based on "incomplete [historical] research." (p. 205 of Calder).

62. (1959), 28 W.W.R. 376, 31 C.R. 12, (N.W.T. Ct.).

63. Op. cit., fn. 4.

64. (1974), 28 C.R.N.S. 268, (B.C. Prov. Ct.).

65. (1974), 6 W.W.R. 206, at p. 234 - 235.

British Columbia Court of Appeal where the Calder case originated. Instead they both followed Hall, J., and held in favour of the Natives. It would therefore appear that on the geographic issue, the trend in judicial thinking is towards extending the applicability of the Proclamation to all areas of Canada other than those specifically excluded.

The second area of doubt concerning the Proclamation is whether or not it was declaratory of the existing rights or the sole source thereof. Again, as was discussed earlier, the practice of the colonizing nations and the British, both before and after the Proclamation, was to recognize some land rights in the natives. The relevance of the American cases, which are fairly consistent in holding that the Indians had rights pre-dating the Proclamation, was affirmed by the Supreme Court of Canada in the leading early Canadian case, St. Catherine's Milling and Lumber Company v. The Queen.[66] In that case, Canada claimed that the Indians had a title in fee simple to the land granted under the Proclamation of 1763 (and it was therefore under the Dominion's control). Ontario claimed the land was under her control subject to the usufructory right of the Indians. Both the Supreme Court of Canada and the Privy Council ruled in favor of the province, however, in so doing the Privy Council made it clear that the Indians retained their rights, stating,

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66. (1887), 13 S.C.R. 577, at p. 610 (S.C.C.); affd. (unanomously) (1888), 14 A.C. 46, (P.C.).

> there has been all along vested in the Crown a substancial and paramount estate, underlying the Indian title, which became plenum dominum wherever the title was surrendered or otherwise extinguished. 67

They also, however, ascribe the source of that right to the Proclamation[68] but it must be borne in mind that this area was clearly within the geographic bounds of the Proclamation and there was therefore no need to go behind it. It is also noted that in the Supreme Court of Canada the majority were not prepared to so restrict the source of the right. Ritchie, C. J., states baldly that

> the lands in question ... are necessarily, territorially, a part of Ontario, and the ungranted portion of such lands not specifically reserved for the Indian, though unsurrended and therefore subject to the Indian title, forms part of ... Ontario. 69 [emphasis added]

Even Judson, J., in the Calder case, who held that the Nishgas had no aboriginal claims, interpreted the St. Catherine's case as not establishing that the Proclamation was the sole source of aboriginal land claims. He stated, "I do not take these reasons to mean that the Proclamation was the exclusive source of Indian title."[70]

A number of other cases have specifically stated that the Proclamation was declaratory of aboriginal rights. In

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67. 14 A.C. 46, at p. 55.

68. Ibid., p. 54.

69. 13 S.C.R. 577, at p. 600.

70. op. cit., fn. 1; at 34 D.L.R. (3d) 145, p. 152.

R. v. Koonungnak[71] Sissons, J., held that "Like so many great charters in English history, it does not create rights but... affirms old rights." In R. v. White and Bob[72] the British Columbia Court of Appeal stated; "The Royal Proclamation of 1763 was declaratory and confirmatory of aboriginal rights and applied to Vancouver Island." This was specifically affirmed by Hall, J., in the Calder case: "[White and Bob concluded] correctly that the Proclamation was declaratory of the aboriginal rights."[73] Mr. Justice Morrow in Paulette[74] expressed agreement with this statement of Hall, J., as did a County Court[75] and in a separate case, a Provincial Court[76] in British Columbia — both lengthy judgements examining all historical data and both despite the fact that their own provincial Supreme Court had decided along the lines of the majority in Calder.

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71. Op. cit., fn. 4; at p. 302.

72. (1965), 50 D.L.R. (2d) 613, (B.C.C.A.), at p. 638; 46 W.W.R. 193; affd. (1966), 52 D.L.R. (2d) 481, (S.C.C.).

73. Op. cit., fn. 1; at p. 205.

74. Op. cit., fn. 1; at p. 28.

75. R. v. Kruger, [1974] 6 W.W.R. 206, at p. 234.

76. R. v. Dennis and Dennis (1974), 28 C.R.N.S. 268, at pp. 281 - 282. The British Columbia Supreme Court has however stuck to its opinion. In a short judgement in the case of R. v. Deriksan, (1974), [1975] W.W.R. 56, (decided two months before the Dennis case) Aikens, J., merely adopted the reasons of the Supreme Court of Canada majority in Calder.

One should also observe that Judson, J., writing the majority (?) opinion in Calder, held that Proclamation did not apply to British Columbia[77] but held against the Nishgas only because "any right of occupancy which the Nishga Tribe might have had" was unilaterally extinguished by the "Sovereign authority".[78] This then left the Calder court divided as follows: three judges (Judson, Martland and Ritchie) ruling that an aboriginal right may have existed despite the non-applicability of the Proclamation but that that right had been extinguished by statutory implications; three judges (Hall, Spence and Laskin) holding that (a) the Proclamation did apply, giving them an aboriginal claim and (b) even if the Proclamation didn't apply they still held a valid aboriginal claim which was never extinguished for that could only be done by specific declaration or agreement; and the seventh judge, Pigeon, holding against the Nishgas on a procedural ground[79] (concurred in by the first three) with no opinion expressed on the merits.

In view of the other case law and the fact that Calder leans toward the recognition of aboriginal land rights independent of the Proclamation it would be fairly safe to assume that these rights have been judicially established.

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77. Calder, op. cit., fn. 1, at p. 156.

78. Ibid., at p. 167.

79. "the plaintiffs' claim is barred by sovereign immunity from suit without a fiat .... In Canada, immunity from suit has been removed by legislation at the federal level and in most of the provinces. However, this has not yet been done in British Columbia." Ibid., at p. 226.

(b) Government Recognition of Aboriginal Rights

For the sake of brevity I shall not attempt an exhaustive listing or analysis of the various ways in which the government has recognized native land claims but shall only mention a few briefly.

(i) The Treaties

Canada continued to enter into treaties with the Indians after confederation, the last of which was signed in Ontario in 1923. These treaties are generally not considered to be valid international treaties,[80] although there have been a few American decisions which have held they were.[81] More often they are viewed as binding contracts.[82] However, bearing in mind the limitation involved when dealing with the Crown and parliamentary supremacy, they have also been called "moral obligations".[83] Nevertheless, the fact of the matter is that the government authorities found it necessary to enter into these treaties to extinguish

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80. See L.C. Green, Legal Significance of Treaties Affecting Canada's Indians, (1972), 1 Anglo-Am. L.J. 119, at p. 122.

81. See for example: Cherokee Nation v. Georgia, op. cit., fn. 35.

82. See St. Catherine's Milling v. The Queen, op. cit., fn. 21, at p. 54 of the Privy Council decision. Also R. v. Wesley, (1932), 98 C.C.C. 269, (Alta. S.C.), at 283; [1932] 4 D.L.R. 774; 2 W.W.R. 337,

> "Assuming as I do that our treaties with the Indians are on a higher plane than other formal agreement yet this in no wise makes it less the duty and obligation of the Crown to carry out the promises contained in those treaties."

83. See R. v. Syliboy, [1929] 1 D.L.R. 307, at p. 313, (N.S.Co.Ct).

native title. This has not escaped the attention of the courts. In R. v. Sikyea, Johnson, J.A., stated that the source of Indian title is

> Not important because the Government of Canada has treated all Indians across Canada, including those living on lands claimed by the Hudson Bay Company; as having an interest in lands that required a treaty to effect its surrender. 84

This decision was affirmed by the Supreme Court of Canada[85] and this statement specifically adopted by Hall, J., in the Calder case.[86] Hall, J., further stated,

> Surely the Canadian treaties, made with much solemnity on behalf of the Crown, were intended to extinguish the Indian title. What other purpose did they serve? If they were not intended to extinguish the Indian right, they were a gross fraud, and that is not to be assumed. 87

It is therefore fair to say that, while the government has the power to unilaterally extinguish land claims, the fact of consistent governmental recognition of the need to extinguish by way of treaty[88] has led most of the courts to adopt a position that only clear and specific legislation to the contrary will prohibit them from upholding land claims

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84. (1964), 43 D.L.R. (2d) 150, at p. 152; 46 W.W.R. 65; [1964] 2 C.C.C. 325, (N.W.T.C.A.).

85. [1964] S.C.R. 642; 50 D.L.R. (2d) 80; [1965] 2 C.C.C. 129; 44 C.R. 266.

86. Op. cit., fn. 1; at p. 205.

87. Ibid., at p. 202.

88. See also discussion infra, re: Statutory recognition. at p. 28 ff.

in areas where treaties have not been negotiated.[89]

(ii) Statutes and Proclamations

One of the clearest cases of governmental recognition of aboriginal rights was in a little commented on Canadian Statute of 1924 entitled An Act for the settlement of certain questions between the Governments of Canada and Ontario respecting Indian Reserve Lands.[90] This statute embodied an agreement between Ontario and Canada as to the handling of reserve lands. The preamble of the agreement states in part:

> Whereas from time to time treaties have been made with the Indians for the surrender for various consideration of their personal and usufructuary rights to territories ...
>
> And Whereas, except as to such Reserves, the said territories were by the said treaties freed ... of the burden of Indian rights .... [las emphasis added]

The statute, which appears never to have been repealed,[91] contains numerous more references of similar nature.

This statute is not unique. Numerous similar proclamations and statutes are in existence;[92] however, for our

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89. The Calder majority is excepted - see discussion, supra at p. 25.

90. S.C. 1924, C. 48, p. 169.

91. This statute was not carried in any later consolidations but there is also no evidence to be found of it having been repealed.

92. See especially: H.B. Hawthorn, ed., A Survey of Contemporary Indians of Canada, (Ottawa: Indian Affairs Branch, 1966), at pp. 233 - 241; Native Rights, op. cit., fn. 7; chapter 4; and D.B. Smith, ed. Canadian Indians And the Law: Selected Documents, 1663-1972, (Toronto: McClelland and Stewart Ltd.: 1975).

purpose, only a few additional documents need mention. The Rupert's Land Act, 1868[93] was passed in Britain to return the Hudson Bay Company lands to Britain in preparation for their admission to Canada. The subsequent Adress to Her Magesty the Queen from the Senate and House of Commons of the Dominion of Canada[94] contained the following:

> And furthermore, that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purpose of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

The Order of H.M. In Council Admitting Rupert's Land and the North-Western Territory Into the Union,[95] dated June 23, 1870 stated in Clause 14:

> Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the company shall be relieved of all responsabilities in respect of them.

Turning to more recent developments, Prime Minister Trudeau, despite the overwhelming evidence in support of aboriginal claims, made a speech in Vancouver on August 8, 1969 which totally denied the concept. He said

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93. 31 - 32 Vic., c. 105, reprinted in R.S.C. 1970, Appendix Vol., at p. 239.

94. R.S.C. 1970, Appendix Vol., at p. 264.

95. R.S.C. 1970, Appendix Vol. at p. 257; see also clause 14 of the Deed of Surrender executed by the Hudson Bay Co. in favour of Canada - ibid., at p. 274.

> Indian bands often refer to ... aboriginal rights ... we say we don't recognize aboriginal rights. We will recognize treaty rights. We will recognize forms of contract which have been made with the Indian people by the Crown ....
>
> But aboriginal rights, this really means saying, 'We were here before you. You came and took the land from us and perhaps cheated us by giving us some worthless things in return for vast expanses of land and we want to re-open this question. We want you to preserve our aboriginal rights and to restore them to us.' And our answer ... our answer is 'no'. 96

This statement, however, caused considerable dissatisfaction leading to the Standing Committee on Indian Affairs and Northern Development [97] embarking on an examination of the governmental policies towards aboriginal rights. On March 29, 1973, Mr. G. Manuel, President of the National Indian Brotherhood laid before the Committee a position paper entitled Aboriginal Title.[98] This paper declared, that the treaties were a "recognition of Indian sovereignty," that English law (the Royal Proclamation) had established a method for extinguishing that title but the government in many instances failed to follow it and this must be rectified. It proposed that the government formally recognize aboriginal

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96. As reproduced in Native Rights, op. cit., at pp. 331-332.

97. Hereinafter refered to as "The Committee"

98. Appindix J. of Minutes of Proceedings and Evidence of the Standing Committee on Indain Affairs and Northern Development, Issue No. 8, March 29, 1973, First Session 29th Parliament. (Queen Printer: Ottawa, 1973) Hereinafter cited as "Minutes".

claims and then proceed to deal with them on the basis of the obligation such recognition would encompass. (The full text of this remarkable, concise document is attached as Appendix II).

The Committee then passed the following resolution:

> That this Committee report to the House that it accepts and endorses the concept of Aboriginal Title as set out in the paper entitled 'Aboriginal Title'... and urges the Prime Minister, on behalf of the Government of Canada, to publicly accept and endorse the said concept of Aboriginal Title, and to take steps immediatly to enter into negotiations with the Indian people with respect to the said title. 99

This report was tabled in the House of Commons on April 4, 1973.[100] As a result of this and mounting political pressure, the government did an about-face from their 1969 position. The Honorable J. Buchanan, Minister of Indian Affairs and Northern Development announced a new policy on August 8, 1973. As reported in that Department's

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99. Minutes, op. cit., Issue 9, 1973, at pp. 3 - 4. While it may appear that this decision was a hasty one, the Committee had been examining aboriginal rights in depth for some time and heard evidence from numerous native leaders, government officials, aboriginal rights experts and the land claims commissioner. Their testimony is recorded in the Minutes.

100. Journals of the House of Commons of Canada, Vol. CX1X, p. 241; The Report is the "Second Report" of the Committee and the text is also reported at, Minutes, op. cit., Issue 11, at p. 3.

annual report the

> new claims policy was based on traditional use and occupancy of land. These claims based on what is variously described as 'Indian Title', 'Aboriginal Title' or 'Usufructuary Rights', arise among groups of Indian and Inuit people who never entered into treaty relationship with the Crown or whose title was never surpressed by law. 101

Mr. Buchanan's predecessor in office, the Honorable Jean Chretien, in testimony before the Committee on March 3, 1974, indicated that this policy was being carried ahead and funding in the amount of $440,000 for the Inuit and $500,000 for the Northwest Territories Indians was being provided to enable them to research land claims. However, he also stated "I am satisfied that this negotiation process can proceed without the need to stop or put a freeze on northern development."[102] He also outlined the progress of claims negotiation in Quebec, the Yukon, British Columbia and the Northwest Territories.[103]

In summarizing the general principles involved one finds that aboriginal rights were historically recognized in Canada and abroad. In Canada this is evidenced by judicial decision, the treaties, early statutes and proclamations. These rights took the form of a right to fully occupy and use the land. Essentially it was a full right of ownership

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101. Indian and Northern Affairs Annual Report, 1973/1974, (Ottawa: Information Canada, 1974) at p. 34.

102. Minutes, op. cit., Issue 3, 1974, at p. 10.

103. Ibid., at pp. 18 - 19.

with the exception that the land could only be alienated to the Crown. This right could be extinquished by entering into an agreement with the Crown, or, Parliament exercising her supremacy, could extinguish these rights with specific legislation.[104] The latter form of extinguishment is, however frowned on by the courts. In addition, as stated by Hall, J., in Calder, "Once Aboriginal title is established, it is presumed to continue until the contrary is proven."[105] In other words, the onus to prove extinguishment lies on the party who asserts it.

It was the unilateral form of extinguishment which was proposed by the government of 1969. The Calder case however established to the governments' satisfaction that they had at least a moral and in all liklihood a legal duty to negotiate the settlement of land claims. The political infeasability of a unilateral declaration precluded that avenue. Thus, the policy reversal.[106]

Does this policy change then make the previous discussion redundant? Not at all, for the stronger the legal case which can be built for the recognition of aboriginal rights, the stronger will be the bargaining position of the natives. It is with this in mind that I shall turn now to a short

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104. See Calder, at p. 173.

105. Op. cit., at p. 208, Amodu Tijani, op. cit., at fn. 20, was relied on for this statement.

106. The only major settlement to date under the new policy is the James Bay Settlement.

analysis of the applicability of these principles to the Inuit lands.

4. Application of the Aboriginal Rights Principles to the Inuit Lands.

Major historical developments necessitate the division of the Inuit lands[107] in the Northwest Territories into four areas. (See map attached as Appendix III). Area 1 which I will call the North-west coast, includes the area west of the Coppermine River to the Yukon Border and north of the tree-line to the Arctic Ocean. The major historical event which sets this land apart is its inclusion in Treaty No11.[108] Moving east, Area No. 2 (Central Coast) includes the lands between the tree-line and the ocean, bounded on the west by the Coppermine River and on the east by Rupert's land. It is primarily historical omission which sets this area apart. The third area is Rupert's Land — the former territory of the Hudson's Bay Company. It includes all lands which drain into Hudson Bay, Foxe Basin and Hudson Strait.[109] The fourth area is that of the Artic Islands outside the area encompassed by Rupert's Land (i.e. the northern half of Baffin Island and all islands west and north of Baffin Island.[110]

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107. Essentially, the Inuit historically resided in those areas north of the tree-line.

108. See treaty maps in : D.G.B. Kerr, ed., A Historical Atlas of Canada, 2nd ed., (Don Mills, Ontario: Thomas Nelson and Sons, 1966), at p. 57, and Native Rights, op. cit., at p. 118.

109. See: geographic description together with excerpt from Hudson Bay Charter in Native Rights, op. cit., pp. 138-140.

110. Native Rights, op. cit. at p. 144, indicates that early references to the "North Western Territory" likely did not include the Artic Islands.

One argument which can now be made in favour of legal recognition of land claims in all Inuit areas is that the government policy statement of August 8, 1973 specifically included the Inuit lands[111] and, as such, if not an admission of legal liability was certainly a recognition and confirmation of their historic rights.

(a) The North-west Coast

This area was included in the geographic confines of Treaty No. 11 which came into effect on June 27, 1921. This treaty was, however, not signed by any representative of the Inuit people; therefore one can safely say that the Treaty is not good against the Inuit. In the Paulette[112] case Morrow, J., allowed the filing of a caveat in favour of the Indian residents of the Northwest Territories against all lands in the Northwest Territories within the bounds of Treaties 8 and 11 with the exception of the area I have described as the North-west coast. After hearing very extensive evidence on the historic occupation of the territories Judge Morrow stated,

> On the evidence before me I have no difficulty finding as a fact that the area embraced by the caveat has been used and occupied by an indigenous people, Alhapascas speaking Indians, from time immemorial. 113

Earlier in the same case the judge observed

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111. See: Annual Report, op. cit., fn. 101; pp. 34 - 35.

112. Op. cit., fn. 1.

113. Ibid., at p. 23.

> [The] evidence makes it clear that these people have in their separate groups exploited specific areas throughout the whole period, going back to several hundred years before Christ, up to the present with very little in the way of intrusion from other native groups such as the Eskimos to the north ... 114

This is clear judicial recognition of the fact that the Inuit, and not the Indians, have occupied the area in question for several thousand years. It is a fundamental rule of property that one's agreement to extinguish rights in land in which one does not hold rights is not good against the true possessor of those rights. The Inuit have signed no treaties extinguishing their rights in this area[115] and there have been no unilateral proclamations by the government which terminated their aboriginal claim.

It would therefore appear that based on the earlier discussion of aboriginal rights the Inuit of the North-west coast have a valid, unextinguished aboriginal claim in this area.

(b) The Central Coast Area

This area was not included in the Hudson Bay Company lands nor in Treaty No. 11, nor was it subject to any government

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114. Ibid., at p. 174.

115. The only known treaty with the Inuit was signed in Labrador in 1769 in relation to the Moravian Mission there: Native Rights, op. cit., p. 13, N. 2. See also Peter A. Cumming, Native Rights And Law In An Age of Protest, (1971), 11 Alta. L.R. 239, at p. 249. This fact has also been noticed judicially: R. v. Koonungnak, op. cit., fn. 4; at 45 W.W.R., p. 302.

declaration. It has not been complicated by any extensive settlement by the Europeans. Therefore, it would appear that the general principles of aboriginal rights would again apply.

The only possible legal problem that could arise would be the doubtful scenario wherein a court held that the Royal Proclamation was the sole source of aboriginal land rights and the terra incognito doctrine was then applied to restrict the applicability of the Proclamation. The latter, however, could be rebutted through a careful historical analysis as was done by Morrow, J., in the Paulette case. He held that even the land further west and south of the central coast was not terra incognito. This was based largely on the facts that there had been numerous voyages of discovery into the Hudson Bay area even prior to the establishment of the Hudson Bay Company in 1670. The Company established its first post on the Bay in 1672. There is considerable evidence to indicate that, while the mainland was not explored by 1763, the company officials had a good knowledge of what lay to the west. This knowledge was acquired from the natives they were trading with. [116]

(c) Rupert's Land

This area is distinguished by its grant to the Hudson Bay Company in 1670. As such, it was specifically excluded

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116. This "terra incognito" discussion also applies to the Northwest coast and the Islands. See the excellent, concise history of this area in Native Rights, op. cit., at pp. 132 - 138.

from the ambit of the Royal Proclamation.[117] If the Proclamation was held to be the sole source of aboriginal rights this area would be excluded from any consideration.[118] However, as previously noted, this does not seem to be in line with the weight of the legal opinions. Indeed, the documents dealing with the transfer of this territory from the Hudson Bay Company to England and thence to Canada, specifically address the fact that aboriginal rights still remained unextinguished.[119]

(d) The Arctic Islands

The islands[120] are essentially in the same legal position as the Central Coastal zone, that is they were not part of Rupert's land and were not included in any treaties. Again, should the terra incognito argument be raised to restrict the effects of the Royal Proclamation, it could be refuted

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117. This was confirmed by the S.C.C. in Sigeareak - E1 — 53 v. The Queen, [1966] S.C.R. 645; 57 D.L.R. (2d) 536 and R. v Sikyea, op. cit.

118. The Supreme Court of Canada in Sigeareak held that the guarantees of the Royal Proclamation did not apply to exempt an Eskimo from Whale Cave however the court did not examine the question of the independent existance of aboriginal rights.

119. See discussion, supra, at p. 29.

120. R. v. Tootalik E4 — 321, (1970), W.W.R. 435, (N.W.T.Ct.); confirmed that at least from a judicial viewpoint the islands are, in fact, part of Canada (affirmed on this point by: (1970), 74 W.W.R. 740, (N.W.T.C.A.).

historically in regards to Elsmere, Devon, Bylot and Sommerset Islands which had been recorded by Baffin in 1616. The islands west of that could however, create problems for they were not discovered until well after 1763. However as noted previously it is likely that the courts, even previous to the 1973 policy announcement, would have held that land rights still existed due to the common law rights held by the natives, of which the Proclamation was only declaratory.

5. Comment on the 1976 Inuit Proposal

On February 27, 1976, the recognized organization of the Inuit people, the Inuit Tapirisat of Canada submitted to the federal government a proposed agreement in principle for the settlement of land claims. This document is entitled Nunavut — A Proposal for the Settlement of Inuit Lands in the Northwest Territories.[121] It was prepared relying on the 1973 government policy statement recognizing aboriginal rights and indicating the government's willingness to negotiate,[122] as such, it does not attempt to establish their rights legally or historically but simply states that they exist and agrees that negotiation would be preferable to court action.[123] The Proposal states that upon adoption of a final agreement of the nature proposed they would give up all other rights they may have in the land.[124] With minor variations of the southern border, the proposal refers to the land within the Northwest Territories and Yukon shown as their traditional homeland on the map attached as Appendix III.

While it is well beyond the scope of this submission to

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121. This document has not yet been published commercially or by the government. All references are to the "Short English Version" herinafter referred to as the "Proposal".

122. Government funding for research is recognized and repayment of these funds is being proposed by the Inuit.

123. Proposal, op. cit., p. iii, para. 1 and 3.

124. Ibid., Sec. 205, p. 5.

examine the details of the Proposal I shall only comment that it does not appear to be at all unreasonable. It proposes that the Inuit be allowed self-government to an extent similar to that enjoyed by Canadians in the provinces. It also proposes extensive Inuit control over the game regulations and extensive input into land use planning. They do not ask for any cash payments but rather royalties from resourse developments — just as the provinces currently receive royalties. The intended use and control of these funds is carefully laid out. The Inuit kinship with land comes through clearly in their concern for the environment and the arctic ecology. Their suggestions do not appear at all unreasonable especially when one considers the cases which hold that they are entitled to compensation as if they owned the fee simple, not to mention the settlement obtained by the Alaskan natives. All in all, it is a comprehensive, long range plan which shows considerable forethought and a deep concern over the protection of their identity and way of life. It must not be ignored for to do so could lead the Inuit into the same cultural clash which has dealt the Indians of the South such a devastating blow.

6. Conclusion

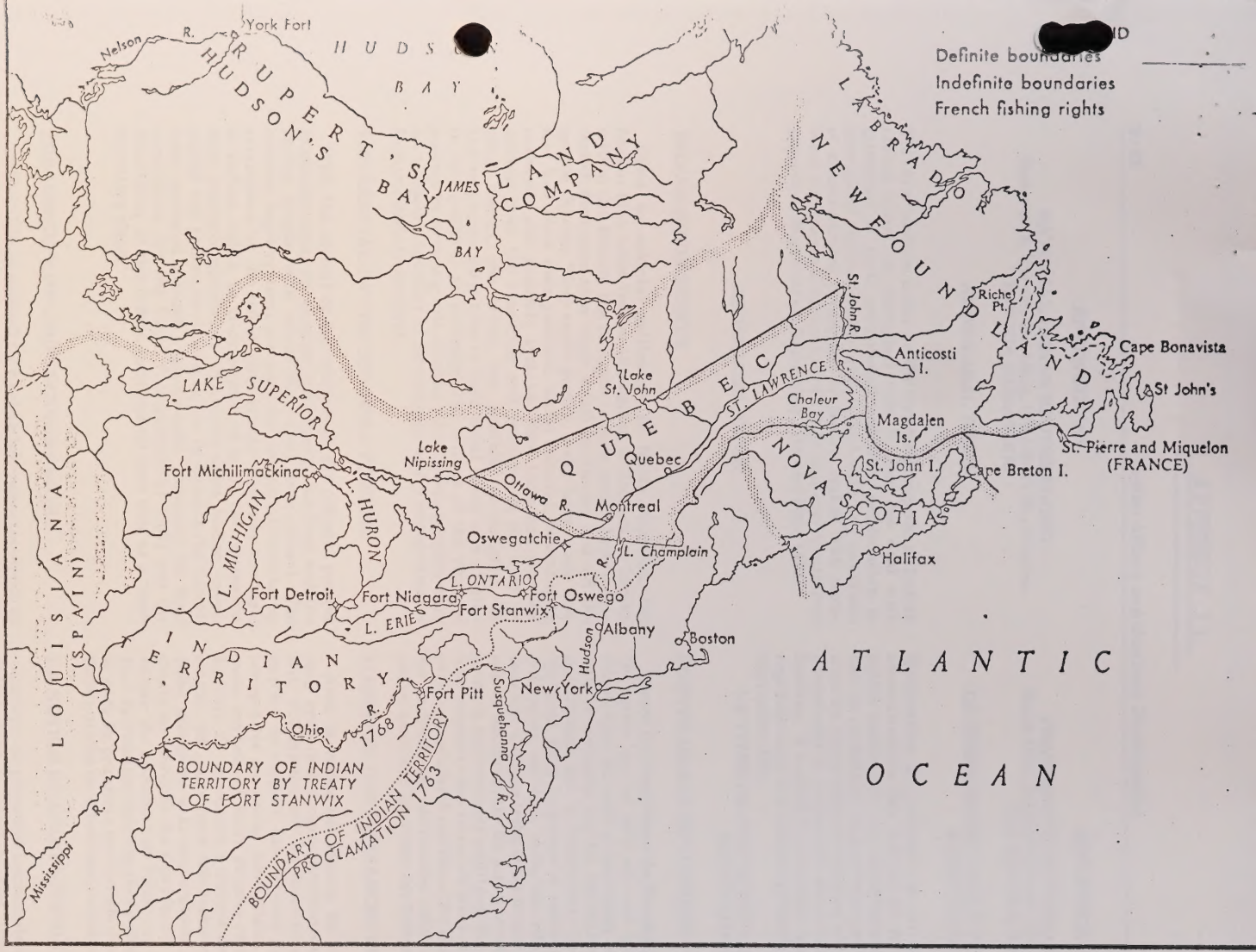
This submission set out to examine the legal basis for Inuit land claims, for while the Inuit themselves would prefer to negotiate, the existence of a solid legal claim should strengthen their position. Another summary of the evidence in their favour would be redundant at this point. Suffice it to say that they would likely stand an excellent chance in today's courts. One need only remember that even the Supreme Court judges who held against Nishga claims in the Calder case were not prepared to say that aboriginal rights do not exist. Furthermore, by a wide preponderence, the courts have held that an effective extinguishment can only be accomplished according to the law and not merely by statutorily allowing a use inconsistent with the native's right of occupation. Given the existence of the right and the failure to extinguish, what court could deny a legal or equitable ruling in their favour?

7. Land Claims and the Pipeline

Given that the Inuit prefer to negotiate their claims rather than to litigate them, a decision to build a MacKenzie Valley Pipeline before their claims are settled would substantially impair their position. Such a decision would remove the incentive to reach an early settlement. Removing the incentive also means ignoring the legal realities. That is, there is a real possibility that a court could, even after the pipeline is completed, rule that the Inuit and/or the Indian people have an equitable interest in the land on which it is built. It would therefore appear that it is also in the best interest of both the Federal government and the native people to settle this question before final approval for a pipeline is given.

Furthermore,that course of action is the only one which will demonstrate beyond doubt that the government is prepared to negotiate in good faith. This statement may sound excessively cynical but one must bear in mind that Canada's record of fulfilling obligations to the native people has been one which has given them reason to be cynical.

It is therefore submitted that a decision to commence the construction of a pipeline should not be made until the native land claims issue has been settled.



APPENDIX I*

* Reproduced from: D.G.B. Kerr, ed., A Historical Atlas of Canada, 2nd ed., (Don Mills, Ont.: Nelson and Sons, 1966), at p. 31.

APPENDIX "K"

NATIONAL INDIAN BROTHERHOOD
Suite 1610, Varette Building, 130 Albert St., Ottawa,
K1P 5G4 (613)236-0673

ABORIGINAL TITLE

This is a position paper on the territorial aspects of Indian claims based on aboriginal title. It does not deal with questions of local government and their relationship to aboriginal rights. Neither does it deal with any questions of constitutional protection of Indian rights. The statement represents a consensus of the Indian representatives present at Montreal on September 17th and 18th, 1971.

ABORIGINAL TITLE

INDIAN SOVEREIGNTY

Prior to colonial settlement in North America, the Indian (the term Indian throughout is defined as Indian within the British North America Act) people had uncontested dominion over their tribal territories and all the people therein. They could govern, make laws, wage war, and had their own political, social cultural, educational, economic and property systems. Each tribe had absolute control over the resources and products of its land. In other words, the tribes had political sovereignty. To Indian people their title to their tribal lands was explicit in this political sovereignty. The actions of the colonial powers in entering into treaties with Indian peoples were an acknowledgement of sovereignty and a recognition of Indian rights to the land.

THE ARRIVAL OF THE COLONIAL POWERS

With the arrival of the white man, the colonial powers gradually assumed political control over the land and the Indian people with whom they came into contact. The colonial legal systems accepted the territorial boundaries established by the tribes, but imposed their own concepts of Indian rights. In their pursuit of lands for settlement they imposed significant limitations upon Indian sovereignty and Indian territorial rights. In Canada the limitations centered around a government monopoly on land acquisition (by the Royal Proclamation of 1763) and the description of the Indian (aboriginal) land title as a "usufructuary right."

THE CONCEPT OF USUFRUCTUARY RIGHT

Indian title as defined by English law connotes rights as complete as that of a full owner of property with one major limitation. The tribe could not transfer its title; it could only agree to surrender or limit its right to use the land. English law describes Indian title as a right to use and exploit all the economic potential of the land and the waters adjacent thereto, including game, produce, minerals and all other natural resources, and water, raparian, foreshore, and off-shore rights. The colonial legal systems called this kind of title a "usufructuary right." To the extent that the use of the concept of "usufructuary right" limited Indian rights as they had been understood by the

APPENDICE «K»

FRATERNITÉ NATIONALE DES INDIENS
Suite 1610, Édifice Varette, 130 rue Albert, Ottawa,
K1P 5G4 (613) 236-0673

LE TITRE DE PROPRIÉTÉ TERRITORIALE DES AUTOCHTONES

Déclaration de principe sur les aspects territoriaux des revendications des Indiens en fonction du titre de propriété territoriale des autochtones. Cet exposé n'aborde pas les problèmes de gouvernement local ni leurs rapports avec les droits des autochtones, non plus que les questions concernant la protection constitutionnelle des droits des Indiens. Il traduit le consensus qui s'est établi parmi les représentants des Indiens présents à Montréal les 17 et 18 septembre 1971.

LE TITRE DE PROPRIÉTÉ TERRITORIALE DES AUTOCHTONES

SOUVERAINETE DES INDIENS

Avant la colonisation de l'Amérique du Nord, les Indiens (le terme est ici pris au sens que lui donne l'Acte de l'Amérique du nord britannique) exerçaient une souveraineté incontestée sur les territoires de leurs tribus et les populations qui y habitaient. Ils pouvaient gouverner, légiférer, faire la guerre et avaient leurs propres régimes politiques, sociaux, culturels, éducatifs, économiques et fonciers. Chaque tribu avait le contrôle absolu des ressources et des produits de son territoire. Autrement dit, elle avait la souveraineté politique. Pour les Indiens, leur titre à la propriété des terres de leurs tribus allait de pair avec cette souveraineté politique. En concluant des traités avec les Indiens, les puissances coloniales reconnaissaient la souveraineté et les droits des Indiens sur leurs territoires.

L'ARRIVÉE DES PUISSANCES COLONIALES

Avec la venue des Blancs, les puissances coloniales se sont emparées progressivement des terres et ont étendu leur domination sur les Indiens avec lesquels elles sont entrées en rapport. Les régimes juridiques coloniaux ont accepté les frontières territoriales établies par les tribus mais ont imposé leurs propres conceptions des droits des Indiens. En cherchant à obtenir des terres pour la colonisation, les puissances coloniales ont imposé des restrictions marquées à la souveraineté des Indiens et à leurs droits territoriaux. Au Canada, ces restrictions gravitaient autour du monopole de l'État sur l'acquisition des terres (par la Proclamation royale de 1763) et autour du fait que le titre de propriété territoriale des Indiens (autochtones) était qualifié de «droit usufruitier».

LA NOTION DE DROIT USUFRUITIER

Le titre de propriété territoriale des Indiens, tel qu'il est défini dans le droit anglais, implique des droits aussi entiers que ceux d'un propriétaire foncier légitime à une restriction près. La tribu ne pouvait pas aliéner son titre; elle ne pouvait que céder ou limiter son droit usufruitier sur le territoire. Le droit anglais décrit le titre de propriété territoriale des Indiens comme le droit d'utiliser et d'exploiter toutes les possibilités économiques du territoire et des eaux adjacentes, y compris la faune, les produits, les minéraux et toutes les autres ressources naturelles, ainsi que les droits riverains, côtiers, et marins et les droits de captation des eaux. Les régimes juridiques coloniaux ont

Indian peoples it was an arbitrary and self-serving action of the colonial legal system.

HOW THE COLONIAL LEGAL SYSTEM DEALS WITH USUFRUCTUARY RIGHT

Since limited Indian rights were recognized by the colonial legal system, under the rules of that system the rights could only be dealt with by legal means. In certain parts of Canada treaties were entered into to deal with some of the rights of the Indian tribes and the Government paid some compensation. In the treaties the Government undertook certain obligations and guaranteed certain rights (such as the right to hunt and fish which the Indian people had exercised from time inmemorial). In other parts of Canada the colonial authorities did not comply with the rules of their own legal system and white settlement (and other land use) took place on Indian lands without proper dealings with Indian people. In yet other parts of the country the Indian people had until very recently or still have use and control of their lands but the government is permitting gradual interference with this use and control without first recognizing and dealing with Indian title.

The highest standards of dealings were to be maintained by the Crown, because, by colonial legal theory, it alone had the power to protect Indian rights as trustee of the Indian interest. Although the Crown in the past has failed to honor its moral and legal commitments, it must now respect those obligations and recognize Indian rights. The use of the land must be preserved or restored or the Indian rights otherwise dealt with to the satisfaction of the Indian people involved.

LEGAL CONSEQUENCES OF INDIAN OR ABORIGINAL TITLE TODAY

By the British North America Act the obligation to deal with Indian claims is upon the federal government. Provincial laws cannot extinguish Indian claims based on aboriginal title. Recognition by the federal government of aboriginal title means:

(a) a recognition of the obligations to deal with Indian claims in non-treaty areas of the country. In the areas where Indian people have lost or are gradually losing the use of the land either the full use of the land must be protected or restored or the claims based on Indian title must be dealt with to the satisfaction of the Indian people involved.

(b) In the areas where Indian people still have the use and control of their lands, no encroachment is permissible without the consent of the Indian people involved.

(c) If treaties meet adequate standards of fairness, a recognition of treaty promises as they were understood by the Indian people. If the treaties fail to meet adequate standards of fairness this failure must be acknowledged and fair and adequate arrangements made to the satisfaction of the Indian people involved.

appelé ce genre de droit «droit usufruitier». Dans la mesure où le recours à la notion de «droit usufruitier» limitait les droits des Indiens tels qu'eux les entendaient, ce fut une mesure arbitraire du régime juridique colonial visant à servir ses propres intérêts.

LE DROIT USUFRUITIER SOUS LE RÉGIME DU DROIT COLONIAL

Comme le régime juridique colonial reconnaissait des droits limités aux Indiens, ces droits ne pouvaient dès lors relever que des tribunaux. Dans certaines parties du Canada, des traités ont été signés pour disposer de certains des droits des tribus indiennes, et en contrepartie, le gouvernement a versé des dédommagements. Dans les traités, le gouvernement s'était engagé à certaines obligations et avait garanti certains droits (comme le droit de chasse et de pêche que les Indiens exerçaient depuis toujours). Dans d'autres parties du pays, les autorités coloniales ne se sont pas conformées aux dispositions de leur propre code de droit, et des colonies de Blancs (sans parler d'autres utilisations des territoires) sont apparues sur les terres des Indiens sans ententes appropriées avec ces derniers. Dans d'autres régions encore, les Indiens avaient jusqu'à tout récemment, ou ont encore, l'usage et le contrôle de leurs terres, mais le gouvernement permet qu'une ingérence graduelle s'y manifeste sans, au préalable, reconnaître les titres des Indiens et y faire droit.

Il appartenait à la Couronne de maintenir les plus hautes normes de négociations, parce que, selon les principes du droit colonial, elle avait seule le pouvoir de protéger les droits des Indiens en qualité de dépositaire des intérêts de ceux-ci. Même, si dans le passé, la Couronne n'a pas toujours honoré ses engagements moraux et juridiques, elle doit maintenant respecter ces obligations et reconnaître les droits des Indiens. L'usage des terres doit être préservé ou restoré, ou bien il faut disposer autrement des droits des Indiens à la satisfaction de la population autochtone en cause.

LES TITRES DES INDIENS OU DES AUTOCHTONES ET LEURS CONSÉQUENCES JURIDIQUES ACTUELLES

L'Acte de l'Amérique du Nord Britannique attribue au gouvernement fédéral l'obligation de disposer des revendications des Indiens. Les lois provinciales ne peuvent laisser s'éteindre les réclamations des Indiens fondées sur le titre de propriété des autochtones. La reconnaissance de ce titre par le gouvernement fédéral signifie:

(a) Reconnaître l'obligation de faire droit aux revendications des Indiens dans les régions non soumises à un traité. Dans celles où les Indiens ont perdu ou perdent graduellement l'usage des terres, ou bien il faut le protéger ou le restorer intégralement ou bien il faut faire droit aux réclamations fondées sur le titre de propriété des Indiens à la satisfaction des intéressés.

(b) Dans les régions où les Indiens ont encore l'usage et le contrôle de leurs terres, aucun empiétement ne peut être permis sans le consentement des Indiens en cause.

(c) Si les traités répondent à des normes raisonnables de justice, il faut reconnaître les promesses contenues dans ces traités selon l'interpretation qu'en donnent les Indiens. Si les traités ne répondent pas à des normes raisonnables de justice, il faut le reconnaître et prendre des dispositions justes et convenables à la satisfaction des Indiens en cause.

(d) A recognition of the obligation to restore or, with the consent of the Indian people, to compensate for the loss of specific rights (such as hunting, fishing or trapping rights) which are either preserved in treaty areas or which [illegible] in non-treaty areas as part of unextinguished Indian [illegible]s and which have been curtailed by Government [illegible]n.

(d) Il faut reconnaître l'obligation de rendre aux Indiens certains droits ou, avec leur consentement, de les dédommager de la perte de ces droits (comme les droits de chasse, de pêche ou de piégeage) qui ou bien sont conservés dans les régions soumises au régime d'un traité ou bien subsistent dans les régions non soumises à un tel régime en tant que droits non abolis des Indiens et qui ont été restraints par l'action du gouvernement.

APPENDIX III
1909-09
LEGEND
INUIT HOMELAND
LAND INCLUDED IN TREATIES
RUPERT'S LAND (HUDSON'S BAY CO.)
APPROXIMATE LIMIT OF PERMANENT POLAR ICE
STEFANSSON 1913-16
AMUNDSEN 1903
PARRY CHANNEL
MELVILLE ISLAND
BANKS ISLAND
VICTORIA ISLAND
PRINCE OF WALES ISLAND
SOMERSET ISLAND
BOOTHIA PEN.
BRODEUR PEN.
BYLOT ISLAND
DISTRICT OF MACKENZIE
NORTHWEST TERRITORIES
TREATY No. 11
KEEWATIN
DISTRICT OF FRANKLIN
FOXE BASIN
FOXE CHANNEL
MELVILLE PENINSULA
SOUTHAMPTON ISLAND
CUMBERLAND PENINSULA
BAFFIN ISLAND
HUDSON STRAIT
HUDSON BAY
QUEBEC
Cornwall I.
Jones Sound
Cornwallis I.
Lancaster Sound
Prince Regent Inlet
Barrow Str.
Melville Sound
McClure Str.
Viscount Melville Sound
McClintock Chan.
Dease Str.
Dellot Str.
Prince Albert Sd.
Dolphin and Union Str.
Victoria Str.
James Ross Str.
Boothia Gulf
Committee B.
Wales I.
Pelly B.
Chantrey In.
Queen Maud Gulf
Coppermine
Coronation Gulf
Hood R.
Bathurst Inlet
ARCTIC CIRCLE
Garry L.
Macdougall
Pelly L.
Wager B.
Back R.
Schultz L.
Baker L.
Chesterfield Inlet
Wharton L.
Thelon R.
Dubawnt L.
Artillery L.
Fort Reliance
Aylmer L.
Clinton Colden L.
Lac La Martre
Fort Simpson
Fort Providence
Great Slave Lake
Fort Resolution
Yellow Knife R.
Fort Nelson
Fort Smith
Wholdaia L.
Kasba L.
Thlewiaza R.
Tha-anne R.
Kazan R.
Dubawnt L.
Great Bear R.
Fort Norman
Fort Franklin
Great Bear L.
Mackenzie R.
Horton R.
Fort Good Hope
Peel R.
Liverpool Bay
Rae Isthmus
Repulse Bay
Rae Welcome Sound
Frobisher Bay
Cumberland Sd.
Home Bay
Salisbury I.
Resolution I.
Nottingham Island
Wolstenholme
Evans Str.
Fisher Str.
Coats I.
Mansel I.
Ottawa Is.
Akpatok I.
Diskoo
Davis Str.
Lowe 1904
Hall 1867
Amundsen 1903
Low 1903-1904
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MACKENZIE VALLEY PIPELINE INQUIRY

BRANCH OFFICE:

Empire Building
124 O'Connor Street, ≒502
Ottawa, Ontario K1P 5M9

Telephone: (613) 235-6159
Telex: 053-3693

COMMISSIONER

Mr. Justice Thomas R. Berger

HEADQUARTERS:

Resources Building
5009-51st Street,
P.O. Box 2817
Yellowknife, N.W.T. X0E 1H0

Telephone: (403) 873-3580
Telex: 034-45552

CLOSING REMARKS

BY THE HONOURABLE MR. JUSTICE T. R. BERGER

AT THE HEARINGS OF THE

MACKENZIE VALLEY PIPELINE INQUIRY

HALIFAX, NOVA SCOTIA

TUESDAY, JUNE 8TH, 1976

11:00 p.m.

I think our swing through southern Canada has been a month well spent.

We have held hearings in Vancouver, Calgary, Edmonton, Regina, Winnipeg, Ottawa, Toronto, Montreal, Charlottetown and Halifax.

The MacKenzie Valley is a long way from these cities, but the concern we have found for the future of the North extends throughout Canada.

We came to the South because we received a multitude of requests from every region of Canada, to be heard.

~~Four hundred~~ 325 of you have presented briefs during these southern hearings. I have tried to learn something from each one of you, and I hope you have tried to learn something from each other.

It should come as no surprise that on each side opinions are strongly held, touching as they do many of our nation's deepest concerns about the development of the North, the environment, patterns of energy consumption, and the rights of native people.

We have had a confrontation of principles, of ideas and of theories at these hearings. That is a good thing as long as we are prepared to listen to one another, to consider the opinions not only of those with whom we agree, but also of those with whom we disagree.

Out of this debate we can seek to establish constructive approaches to Northern development to recommend to the Government of Canada.

An unexpected dividend at these hearings has been the contribution made by men and women who have lived in the North and returned to their homes in the South. In every city we have visited they have come to the hearings to tell us what their own experience in the North has taught them and to offer their views on the future of the North.

The submissions at these hearings have been constructive and creative.

The debate has been worthwhile, if Canadians now have a greater awareness of the issues facing the North and all of us than before.

Certainly the country has shown a very great interest in the hearings. It proves that Canadians are not wired into their TV sets, but are willing to come out into the sunshine to discuss these questions that are so important to us all.

The Inquiry stands adjourned until we reconvene in Yellowknife on Monday, June 21st at 1:00 p.m. to complete the last phase of the hearings.

SHOW YOUR CONCERN!

No matter how compelling the social, environmental, and economic reasons,
No matter how well the Berger Inquiry documents those reasons,
No matter how much you agree with those reasons

Against the MacKenzie Valley Pipeline,

The decision to proceed with the pipeline is a political decision, made for political reasons, by the Federal Cabinet. The oil companies are pressuring for an early start of construction. Unless the politicians are convinced that the voters do not want the pipeline, the Cabinet will give in to the oil companies.

Write to:Prime Minister Trudeau;Judd Buchanan, Minister of Indian Affairs and Northern Development (mainly Northern Development); Joe Clark, leader of the Official Opposition;Ed Broadbent, leader of the NDP; and to your local M.P.

Point out the need for:

- -no more development in the North until the Land Claims are settled
- -adequate time for Native People to prepare their land claims
- -the establishment of a means for self-determination for Native Peoples
- -independent analyses of the impact of the pipeline construction and other activities in the North
- -research into alternate energy sources and supply
- -effective policies to promote energy conservation

Letters may be sent, without postage, to members of parliament as long as they are addressed c/o House of Commons, while parliament is sitting.

Coalition for Development, 6324 Cornwall St., Halifax.

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Coalition for Development, 9924 Colonwall Dr., Halifax.

"Christ is the Peace Between Us"

Holy Year

Statement on Justice

STATEMENT ON SOCIAL JUSTICE

by Most Rev. James H. Hayes, J.C.D., D.D.,

Archbishop of Halifax

Holy Year Congress

June 2, 1974

Study Guide prepared in collaboration
with the Catholic Social Services Commission

STUDY GUIDE

> " . . . we have too often believed that an academic knowledge of the social teaching of the Church is the most important, if not sufficient. I suggest that henceforth, our basic principle must be: only knowledge gained through participation is valid in this area of justice . . . In a Holy Year, a Jubilee Year, we must live justice in concrete ways." (Par. 8)

The purpose of this study guide is to assist us in reflecting on this Statement of Social Justice. It is designed for use in the home, at school, in Parish Councils and Parish Committees, in community and youth groups, in professional groups, for people in all walks of life. The paragraphs of the Statement have been numbered and outlined in the margin for ready reference when using the Guide.

Its aim is to increase our awareness of the demands of social justice in our life, the life of our community, province, country and the world. Its goal is to move us to action as individuals, as families, as a group, as a community, to make possible that social justice which this statement speaks of so strongly. May we be open to Christ's Spirit of reconciliation and let Him work in us as we ask "Lord what will you have me do?"

OUTLINE OF STATEMENT ON SOCIAL JUSTICE

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3 —Christ the Liberator
4 —Liberation and the Cross
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Part I INTRODUCTION: NEED FOR RECONCILIATION

Need for Reconciliation

1.) Christ, risen from the dead, reconciles all things and, in his own person, is the 'peace between us.'[1] The self-giving love of Christ restores the ultimate unity between man and man and between man and God from the shattered, self-centred condition of sin that afflicts us as individuals and as a whole society. This reconciliation we both celebrate and pray for in the Holy Jubilee Year. But the Good News of the love that works reconciliation and peace requires us to establish the equality of justice and to free all men to live their human dignity. The 1971 Bishops' Synod proclaimed:

> "Christian love of neighbor and justice cannot be separated. For love implies an absolute demand for justice, namely, a recognition of the dignity and rights of one's neighbor . . . Because every man is truly a visible image of the invisible God and a brother of Christ, the Christian finds in every man God himself and God's absolute demand for justice and love."[2]

The Common Good

2.) God created the world to be developed and enjoyed in equality by all men, not to be carved up by the over-development of the strong to the detriment of the weak, nor to be enjoyed by the 'haves' to the improverishment of the 'have-nots.'[3] This is a part of the Christian heritage rooted in its Hebrew ancestry. The Old Testament Jubilee Year proclaimed the ideal that:

—no man is absolute lord of his possessions, but only their temporary steward.[4]

—no man has the right to take for his permanent and exclusive use what is common to all.[5]

—as a matter of justice and right, goods that have been taken from the common heritage must be periodically restored to common ownership and use.[6]

—the common dignity of all men must be respected and any infringement of this dignity must be repudiated.[7]

'Woe to those who add house to house and join field to field until everywhere belongs to them and they are the sole inhabitants of the land.'[8] Only when the common good was honoured could God's people claim to be faithful to Him; when it was not they were chastised for idolatry and could make no claim to love either God or neighbour.[9] Though we have no call to restore ancient Hebrew institutions, men today thirst for a return to this sense of social justice, for a rediscovery in our communities of the meaning of the common good, for it is a lasting Christian value.

Christ the Liberator

3.) In St. Luke's Gospel, Jesus affirms that he is sent to bring us back to this ideal. He, the Christ, the Reconciler, is also the Liberator, for he comes to bring the final Jubilee, 'to proclaim the Lord's year of favour.'[10] The Synod asserts: "Christ lived his life in the world as a total giving of himself for the salvation and liberation of men."[11] He did not accomplish this without meeting face to face the forces of division and coercion, without the renewal of the Cross. Only when he is 'lifted up' can Christ 'draw all men to himself.'[12] The Second Vatican Council reminds us:

"Undergoing death itself for all of us sinners, he taught us by example that we too must shoulder the cross that the world and the flesh inflict upon those who search after peace and justice."[13]

Liberation and the Cross

4.) The walls of isolation and division that constitute sin will fall only when those who are strong voluntarily give up their habits of domination and share the instruments of power with those who need them to develop themselves; only when those who have possessions voluntarily sacrifice them to those who have been systematically deprived of their share in the common heritage. In the words of the Synod:

"It is impossible to see what right the richer nations have to keep up their claim to increase their own material demands, if

the consequence is either that others remain in misery or that the danger of destroying the very physical foundations of life on earth is precipitated. Those who are already rich are bound to accept a less material way of life, with less waste, in order to avoid the destruction of the heritage which they are obliged by absolute justice to share with all other members of the human race."[14]

We are all 'coheirs with Christ' in the promise of creation.[15]

DISCUSSION: (Par. 1 to 4)

—What do you think of the four points stated in paragraph 2, concerning the ideal of the Old Testament Jubilee Year?

—Do you feel they should apply today?

—The Old Testament proposed the ideal that "as a matter of justice and right, goods that have been taken from the common heritage must be periodically restored to common ownership and use."

—What is 'common heritage'?

—Would this idea relate to the expropriation of land, as sometimes practiced by our government? Can we define such an act of restoring land to common ownership and use; such as for parks, recreation, highways, housing, or for preservation of environmental balance, a matter of social justice?

—Is taxation a means of restoring the common heritage to common ownership and use? If it is, how should taxes be administered to ensure the most equitable distribution of wealth? If one has profited from the community, is it a matter of justice that a portion of such profits be periodically returned to the community even above and beyond the taxes normally paid for such profits?

—What is your reaction to the practice of some industries in Canada that import raw materials at a low cost from developing countries, (such as cocoa from Ghana, bauxite from Jamaica), and then sell it back as a refined product for a large profit? Should they be expected to share this profit with the producing country for its own development?

—Is the practice referred to in #8 of " . . . adding house to house, and joining field to field," something we admire in a person? Is it encouraged as a means of "getting ahead" today? Does such a practice recognize Christian values?

—Do you think there are corporations in your area which have monopoly control of land and of construction? Should anything be done?

—How can the "rich" become sufficiently aware to earnestly respond to the poor by " .. . voluntarily giving up their habits of domination and sharing the instruments of power?" Note the situation in Rhodesia and South Africa. What is the Alternative? Note the situation in Peru, Tanzania, and Bangla Desh.

—What can happen if the "rich" refuse to accept this sharing? Note the situation in Latin America. Are we aware of similar examples in Canada?

Part II SOCIAL JUSTICE: NEED TO LIVE JUSTICE

Central to Christian Teaching

5.) If love is the heart of Christianity, justice is its backbone and equality is its sense of balance. Social Justice is central: this truth has formed a substantial part of the Church's teaching in the modern era, from Leo XIII to Paul VI, and it has been reiterated, expanded and strengthened both by the Second Vatican Council and the 1971 Bishops' Synod.

Basic Right of Every Individual

6.) The Council holds: 'There must be made available to all men everything necessary for leading a truly human life.'[16] It proposes as 'the norm of human activity' that 'in accord with the divine plan and will, it should harmonize with the genuine good of the human race, and allow men as individuals and as members of society to pursue their total vocation and fulfill it.'[17] The Council says it is the obligation of the Church and of its every member to promote the rights necessary, 'by virtue of the Gospel committed to her,'[18] because 'the promotion of unity belongs to the innermost nature of the Church.'[19] The Synod explains: "the Mission of Preaching the Gospel dictates at the present time that we should dedicate ourselves to the liberation of man even in his present existence."[20] The Council stresses that they are wrong

> "who think that religion consists in acts of worship alone and in the discharge of certain moral obligations, and who imagine they can plunge themselves into earthly affairs in such a way as to imply that these are altogether divorced from the religious life.
> This split between the faith that many profess and their daily lives deserves to be counted among the more serious errors of our age."[21]

Need for Change

7.) Both the Council and the Synod faced squarely the practical implications of this teaching: "An improvement in attitudes and widespread changes in society will have to take place if these objectives are to be gained."[22] The Synod speaks of 'new sacrifices required of a generation that wants to build its own future.'[23] The Church, as Archbishop Plourde of Ottawa declared to the Synod, 'must demonstrate that it can reach beyond the consumer society, and live a life of sharing and detachment. It must demonstrate that its entire resources . . . are at the disposal of the whole community, including the most underprivileged.'[24]

Need to Live Justice in Concrete Ways

8.) To realize these lessons, abstract statements of principle are not sufficient. We only learn effectively by doing, by practicing in the life of the local community what is preached by the universal Church. Cardinal Flahiff warned the Synod:

"When we ask ourselves . . . why the social teachings of the Church have had so little impact, I believe we may have to admit that we have too often believed that an academic knowledge of them was the most important, if not sufficient. I suggest that, henceforth our basic principle must be: *only* knowledge gained through participation is valid in this area of justice; true knowledge can be gained only through concern and solidarity."[25]

To practice justice is the only way to fulfill the Council's aspirations: in a Holy Year, a Jubilee Year, we must live justice in concrete ways.

Need for Concrete Action

9.) Concrete action begins with people who are conscious of injustice and react to it in the Spirit of Christ. The Synod declared: "The examination of conscience that we have made together, regarding the Church's ivnolvement in action for justice, will remain ineffective if it is not given flesh in the life of our local churches at all their levels."[26]

DISCUSSION (Part II)

—Suggested background readings related to this section include:

—The Gospel of Matthew 25: 34-46
The Papal Encyclicals:
Rerum Novarum
Quadragesimo Anno
Mater et Magistra
Populorum Progresso

—The documents of Vatican II; especially the Church in the Modern World.

—Basic to human development is the constant pursuit of the development of individual talents and skills. Discuss.

—The "split between the faith that many profess and their daily lives deserves to be counted among the more serious errors of our age." (Par #6) Do we recognize the hypocrisy described in this paragraph? Discuss.

—How can the Church demonstrate that its resources are at the disposal of the whole community?

—Does your participation in Church and community affairs sharpen your social concern?

Part III CHALLENGE TO ACTION

Present Dilemma

10.) How can we, as a Christian community in Nova Scotia start to bring about this ideal that Scripture and the Church put to us? Many economic and social arrangements right in our midst prevent the realization of the Christian vision. We as a nation have bound ourselves to our own structures and have resisted the liberating grace of Christ.

I.) The Dignity of Life

Right to Life is Basic

11) Since the demands of justice are based on man's own worth, the first demand of justice is the right to life. It is because of justice and human dignity that the Church has and will always strongly oppose abortion and any other threat to the life of the weakest member of the human family. This justice further demands that all human life, because of its God-given dignity, be protected, cherished and loved. It follows also that the Church will support the legitimate demands of all members of society who suffer discrimination and whose human dignity is therefore attacked.

DISCUSSION (Par. 11)

—Do you really believe that the right to life is based on the principles of the Gospel? Can you think of Gospel passages which demonstrate clearly the value of human life?

—What practices or attitudes in our society stem from a failure to set the highest value on the dignity of human life?

—Recognizing the right to life as basic, do you respect this right equally for all, including the unborn?

—What can be done to relieve people from the intense suffering that is sometimes caused by an unwanted pregnancy?

—How do we and our children relate to unmarried parents and their children?

—What can we do to see that adequate medical, counselling, financial, day care and other services are available in our communities for the support and strengthening of family life?

—Do we in our community promote an atmosphere for our senior citizens wherein they feel they are able to make a positive contribution to the life of the community as persons with dignity and pride? What social and political actions can we take with senior citizens to correct these indignities?

—Does your community grant equal rights to all men and women? Are there examples of discrimination or preference shown to persons of a particular race, sex, language group or social class? What other distinctions in your community detract from the dignity of human life?

II.) In the Distribution of our Wealth and Resources

Enlightened Self Interest

12.) In 1972 the Bishops of Canada said: 'The riches of Canada are unequally shared. This inequality, which keeps so many people poor, is a social sin.'[27] We in Canada have counted upon a generally increasing prosperity to trickle down to all. This has not happened. It will not happen, for we cannot count upon 'enlightened self-interest' to get the prosperous, the powerful and the articulate to share their gains with the poor, the weak and the voiceless. People used to think that, if each person 'honestly' pursued all he could get, then the whole system would work better and all would be better off; private greed, it was thought, would be magically transformed into public benefit.

Seek Justice First

13. We Christians, especially in a Holy Year, must recognize that this attitude stands under God's judgment. Christ has warned us that we must seek first the Kingdom of God and his righteousness[28] which includes justice. We may not seek more prosperity first and then expect justice as a by-product.

Christian Education

14.) We, as a Christian community, pledge ourselves to a continuing educational program to challenge the self-seeking however enlightened, that lies in the heart of our economic system, and to transform our personal consciousness, attitudes and community relations in accordance with the wish of the Synod:

> "Education demands a renewal of heart, a renewal based on the recognition of sin in its individual and social manifestations. It will also inculcate a truly and entirely human way of life, in justice, love and simplicity. It will likewise awaken a critical sense, which will lead us to reflect on the society in which we live and on its values; it will make men ready to renounce these values when they cease to promote justice to all men. In the developing countries, the principle aim of this education for justice consists in an attempt to awaken consciences to a knowledge of the concrete situation and in a call to secure a total improvement: by these means the transformation of the world has already begun . . . This education is deservedly called a continuing education; it comes through action, participation and vital contact with the reality of injustice."[29]

For every dollar received in taxes by Ottawa, the top 8.5% of income earners contribute 40.3% of this dollar; whereas the bottom 12.5% of income earners contribute 48.7% of this dollar.

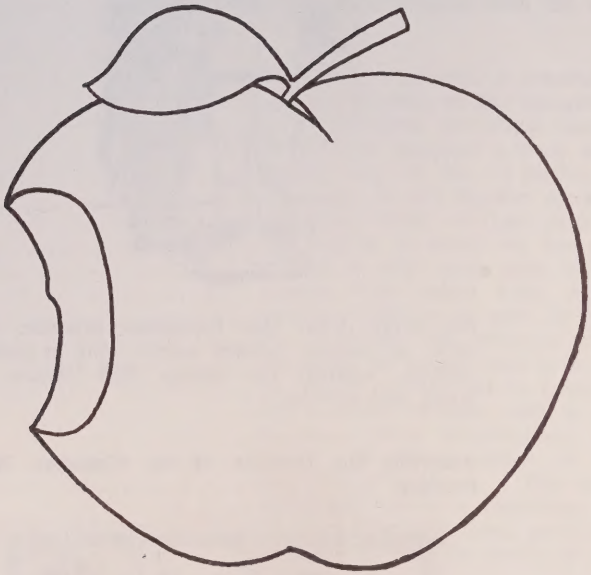
For every dollar that Canadians produce, the top 20% of income earners receive 44¢ in goods and services; whereas the bottom 20% receive 4¢ in goods and services.

Receiving the Benefits of the Canadian National Product:

Top 20%	Next	Middle	Next	Bottom
gets	20%	20%	20%	20%
44c	gets	gets	gets	gets
	24c	18c	10c	4c

How do you relate these facts to Part A, paragraph #2, of this statement?

⅔ of the Worlds population takes a bite ...



...the rest is ours

Why spend money on the poor in other countries; don't we have enough poor people in Canada?

Do the poor deserve equality?

—How much thought have you given to these common attitudes?

- *Poverty is an insignificant problem in a rich country like Canada?*
- *Government giveaway programs have made the poor comfortable.*
- *If more is given to the poor, we'll all have the same income and there will be no incentive to work.*
- *People are poor because they choose to be and prefer not to work.*
- *Unemployment insurance and welfare payments are too high— they discourage people from accepting honest work.*
- *The average Canadian is overtaxed now.—We can't afford to spend more on the poor.*

Can we afford equality?

—Assume that Canada tried to even out income. What reasons can you give for for this not working? What does Holy Scripture say about these reasons?
—Do you think that freedom means freedom to earn as much as you can and spend it as you please? Is this why the poor have no right to share your hard-earned income?
—Is it true that if the poor had more money, they would be more free? Does this mean that more freedom for them means less freedom for me?
—Do you think that Christ promises a "more for you, less for me' kind of freedom?
Read Matt. 7; 12; Matt. 19; 16-26; Matt. 25; 31-46; Luke 36-38; Luke 10; 25-28; Acts 4:32-35

Universal Right of Families to Decent and Adequate Housing

III.) In Housing

15.) A glaring example of the inequitable distribution of resources is housing. Acts 4:32-35. Men and Women and called by God to found families, to bring up children. This responsibility, once assumed, implies a right, in the name of human dignity, to decent and adequate housing. It has become clear that a system threaded with "private greed" fails to provide

Canadians of even average income with adequate housing. Other solutions must be found to the very real economic problems involved in providing housing. Certainly, other principles must be agreed upon for the provision and the distribution of housing than the ability to pay out of private earning for housing so grotesquely inflated in price.

Practical Responses to Housing Crisis

16.) We as a Diocese, I as a Bishop, the priests, the Pastoral Council, the Catholic Social Services Commission and all members of the Church—can begin to act on this problem immediately.

In this we will continue the Church's tradition of concern for those who live at a disadvantage in our economic system as exemplified by our participation in the Inter-Faith Housing Corporation, and projects such as the St. Vincent Guest House, etc. We will cooperate to develop new ways of providing housing, and sponsor agencies encouraging alternative methods of distributing housing, such as continuing co-operatives and non-profit housing.

Use of Church Land

17.) To provide for its worship and works of education and charity, the Archdiocese of Halifax has acquired certain land. With changing population patterns and pastoral methods some of this property will be available for other purposes. We are committed to the policy that the real estate held by the Church should be used for the priorities and needs of the Church's apostolate and for the good of the whole community. We have undertaken a land inventory and use assessment to ensure that this policy continues to be effective.

DISCUSSION: (Par. 15 to 17)

—The Bishop has stated in paragraph 15: "A glaring example of the inequitable distribution of resources is housing." Is this true in your community?

—Recently in Nova Scotia 90% of all new housing went to families within the top 50% of the income scale; whereas 10% of all new housing went to families in the lower 50% of the income scale. (Stat. Can.-CMHC)

—What kind of housing do you suppose is being offered to this last 50%? In light of these facts, do we see housing as a right or a privilege in Nova Scotia?

—A look at recent costs of housing in the Halifax-Dartmouth area reveals the following picture:

Cost of serviced lot	*$7,000.00*
Cost of mortgage at 11% interest per year	*3,300.00*
Cost of modest *home*	*30,000.00*
Property taxes per year	*750.00*
Initial estimated cost of a home	*$41,050.00*

The cost per month of the taxes and interest alone for a modest home is estimated to be around $340.00. The income needed to purchase or build such a home is further estimated to be around $16,000 per year. (Stat. Can. —CMHC)

—Are you satisfied with the availability of housing? What would you suggest as ways of meeting the housing crisis?

—Should decent and adequate housing depend on one's ability to pay, or on the size of one's family, or on other factors?

—Can the present-day private, profit motivated housing industry adequately and justly meet the housing needs of the families in our country? What are the alternatives?

> *"Men and women are called by God to found families, to bring up children. This responsibility, once assumed, implies a right, in the name of human dignity, to decent and adequate housing." (Par. 5)*

—Can you suggest roles for the Church to play in the housing crisis? Are you satisfied with the Church's involvement to date?
—Do you hold any other particular views regarding the use and disposal of church property?

IV.) In Education

Need for Values Education

18.) Many problems impair our educational system in making a full and humanizing education available to all our people—e.g. those with learning disabilities, the mentally retarded, those who suffer from the unequal availability of educational resources. Our education system is seriously deficient in providing for the education of our children in truly human values, an education which the students have a right to expect.

Special Education for Socially Disadvantaged

19.) We need to respond to the special educational problems of those who live in socially disadvantaged environments. Their economic deprivation breeds in them a complex and frustrating pattern of poor physical health, poor self-image, weak motivation, anger, resentment and sometimes despair. These factors interact to perpetuate the cycle's grip on its victims.

Education for Students, not Students for Education

20.) The Church urges support for programs of government and of educators that attempt to break this cycle. To encourage the disadvantaged to grow to human dignity and wholeness, education must free them to cope with their reality and give them the means, not only of surviving in their milieu, but of becoming masters of their own cultural and economic situations. We must adjust the educational system to the needs of the students, not vice versa. We must give greater support to programs such as budgeting, legal and welfare rights, which assist adults to cope with many problems of being under-privileged, programs that do not impose the arbitrary values of one segment of society on another, programs that give a child the self-confidence, self-esteem and skills he needs to be a responsible person in his real-life community. Finally we urge everyone to expend more of their personal resources to sensitize our whole community, but especially teachers and educational administrators, to those special needs.

DISCUSSION: (Par. 18 to 20)

—Have you any suggestions for improving the quality of education in our schools?

—What contribution could you make directly to the development of our public education system?

—How can the values maintained by the Catholic School System be perpetuated in our day?

—Do your children pick up attitudes at school from other children and teachers that you think are not Christian? What could you do about this?

—Do you think a classroom should be a happy place? Is discipline important?

—Do you think children in poorer families than yours are more or less comfortable in school? Why?

—Why do you think the children of the poor, drop-out earlier than other children?

—Do you think your children are learning in school?

—Is your school board elected or appointed? When was the last time you attended one of their meetings?

V. In the Church

Need For Church Reform

21.) The Second Vatican Council recognized that the Church insofar as it is an institution of men on earth, is in continual need of reform and that some Church structures and procedures are actually sinfully unjust.[30] Areas that we can mention explicitly where reform is needed are the role of women in the Church and the lack of communication which has prevented many people from sharing in the full responsibility of members. Too often the Church has given inadequate concern to the just needs of its employees. An outmoded centralization of law-making and administration has restricted local churches in developing their legitimate autonomy and expression of faith that suit their cultures. The formula-

tion and application of Church law has sometimes failed to keep up to date with legal insights and due process.

Marriage Legislation

22.) In particular, the Church's marriage legislation, which itself needs reform, has not been applied evenly and efficiently so that justice has been delayed and by that fact denied.

Separation and the Church

23.) There are, for example, many Catholics who are separated from the Church and unable to participate in its sacramental and community life because they have entered into marriage in disregard of the law which requires Roman Catholics to marry before an official minister of their Church.

Invitation to Reconciliation

24.) During this Holy Year of Reconciliation, we invite these persons to share once again the full life of the Church community. No one can set aside the divine law which demands the permanence of Christian marriage. Nor can we disregard Church laws in such a way as to cause injustice to other persons. But there are many Catholics in irregular marriage situations outside these cases.

25.) To make the special pardon of the Holy Year available to as many of these persons as possible, I have appointed a number of Holy Year Confessors. These priests have special authorization to deal with those irregular marriages that fall within the areas where dispensations from the general laws can be granted. Where a person in the cases in question expressed to one of the designated priests an honest desire to return to the sacraments and be reconciled with the Church, I am prepared in every possible case to dispense from the need of repeating the marriage ceremony. Where the conditions are fulfilled the marriage can be then recorded in the registers of the proper parish.

DISCUSSION: (Par 21 to 25)

—Do you see the Church as an organization which should grow and adapt as society changes?

—Can you identify any areas where changes in Church structure are needed? If you do, how can you best go about making your views known?

—Are you satisfied with the role of women in the Church? If not, what suggestions can you make for reform? How would you go about making these suggestions?

—What is the Pastoral Council? Can you describe its duties and responsibilities?

—Can you suggest possible areas of reform in the Church's marriage legislation?

—Have you told any persons, who don't share in the full life of the Church, about this Holy Year Special Pardon? Is this enough on the Church's part? What more could be done?

—Do you know any of the Holy Year Confessors? Do you know what their concern is? Do you know who to go to to find out? Could you refer anyone to this service?

Part IV **CONCLUSION**

Openness To the Spirit of Christ

26.) During the Holy Year Jubilee let us strive in every possible way to open ourselves to Christ's Spirit of reconciliation and let him work in us. May he renew our civic, economic and church community in accordance with the Good News preached by Paul:

> "For he is the peace between us, and has made the two into one and broken down the barrier that used to keep them apart, actually destroying in his own person the hostility caused by the rules and decrees of the law. This was to create one single New Man in himself out of the two of them, and by restoring peace through the cross, to unite them both in a single body and reconcile them with God. In his own person he killed the hostility. Later 'he came to bring the good news of peace, peace to you who are far away and peace to you who are near at hand, Through him, both of us have, in the one Spirit, our way to come to the Father. So you are no longer aliens or foreign visitors: you are citizens like all the saints, and part of God's household.

You are part of a building that has the apostles and prophets for its foundations, and Christ Jesus himself for its main cornerstone. As every structure is aligned on him, all grow into one holy temple in the Lord; and you too, in him, are being built into a house where God lives, in the Spirit."[31]

DISCUSSION (Par. 26)

—What does it mean, 'to open ourselves to Christ's spirit of reconciliation and let Him work in us?'

—Are you open to the Spirit of renewal in your heart? In which ways?

Part V **DIRECTORY**

If this Statement and Study Guide raises and questions or concerns about which you would like further information, it is suggested that you contact any of the following organizations and Diocesan agencies:

Chancery Office	Rev. Thomas N. White Chancellor 6541 Coburg Road Box 1526 Halifax, Nova Scotia 429-9388
Priest's Senate	Rev. Gordon MacLean St. Mary's Glebe 1508 Barrington Street Halifax, Nova Scotia 423-4116
Halifax Archdiocesan Pastoral Council	Mr. Howard Coady Chairman 6541 Coburg Road Halifax, Nova Scotia 429-9388
Catholic Social Services Commission	Mr. Michael Marentette 1546 Barrington St. Halifax, Nova Scotia 429-2362

Sisters' Council	Sr. Agnes Burroughs P.O. Box 100 Lower Sackville, Nova Scotia 865-3282
Nova Scotians United for Life	1546 Barrington Street Halifax, Nova Scotia
Liturgical Commission	Rev. J. DeLouchry St. Anthony's Rectory 29 Farrell Street Dartmouth, Nova Scotia 463-1372
Religious Education Commission	Sr. Romaine Bates 1546 Barrington Street Halifax, Nova Scotia 422-8434
Ecumenical Commission	Judge P. J. T. O'Hearn 6369 Berlin Street Halifax, Nova Scotia 453-1874
Latin American Committee	Rev. Wm. Pepper Chairman St. John Baptist Rectory 26 Purcell's Cove Road Halifax, Nova Scotia 477-3110
Interfaith Housing Corporation	Mr. Perry Ronayne 59 Hawthorne Street Dartmouth, Nova Scotia 466-3098
Development and Peace (C.C.O.D.P.)	Mr. John Murphy 1546 Barrington Street Halifax, Nova Scotia 422-8428
Holy Heart Theological Institute	Rev. Lloyd Robertson 1546 Barrington Street Halifax, Nova Scotia 422-8434
Birthright	Mrs. Shirley Arab 1546 Barrington Street Halifax, Nova Scotia
Family Life Committee	Mr. Bernard Murphy 1546 Barrington Street Halifax, Nova Scotia

Saint Vincent De Paul Society	P.O. Box 88 Armdale, Nova Scotia
Catholic Cemeteries Commission	Mr. Ernest Gillis 2945 Somerset St., Box 383, Halifax

FOOTNOTES

(1) Eph. 3:15f
(2) Canadian Catholic Conference, 'The Synod of Bishops—Rome, September 30 - November 6, 1971: The Ministerial Priesthood - Justice in the World, interventions of the Canadian Delegates and Official Synod documents,' hereafter cited as 'Synod'; p. 100.
(3) Amos 3:4-8
(4) Leviticus 25:8-12, 23-55
(5) 1 Kings 21:1-3; Micah. 2:1-4
(6) Deuteronomy 15:1-18; Leviticus 25:13-17; Exodus 23:10-12
(7) Jeremiah 34:8-22
(8) Isaiah 5:8
(9) Isaiah 58:1-12; Amos 5:21-27; Isaiah 1:10-17; Hoseah 6:6-7; 2 Micah. 1:5-15; Jer. 6:20; Zecheriah 7:4-14
(10) Lk. 4:19; cf. Isaiah 61:2
(11) Synod, p. 99
(12) John 12:32
(13) G.S., # 38
(14) Synod, p. 109
(15) Romans 8:17 ; cf. 2 Corinthians 6:10; G.S., # 37
(16) G.S. # 26, also # 29
(17) Ibid. # 35
(18) Ibid. # 41
(19) Ibid. # 42
(20) Synod, p. 100
(21) G. S. # 43
(22) Ibid. # 26
(23) Synod, p. 96
(24) Ibid. p. 68
(25) p. 80
(26) p. 109
(27) Canadian Catholic Conference, April 12, 1972
(28) Matthew 6:33
(29) Synod, p. 104
(30) U.R., # 6; G. S. # 43
(31) Ephesians 2:14-22

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